Chief Justice Griffith.

(Photograph by J.J. Hogg and Co., Brisbane. Courtesy of T.S.G. Brown.)
Contents

List of Illustrations vii

Preface ix

1. Foundations 1
2. Early Career 23
3. Recognition 47
4. Style as Premier 88
5. The Liberal Ethos 110
6. Rethinking Priorities 136
7. Compromises 160
8. Federation 185
9. A Peaceful Decade 216
10. Beginning the High Court 255
11. The Established High Court 289
12. A World Collapses 326

Notes 363

Bibliography 412

Index 427
Illustrations

The Chief Justice  frontispiece
Maitland in the 1860s  6-7
Griffith: youth to maturity  39
Attorney-General  42
Brisbane 1881  66-67
Supreme Court, Brisbane  74
Queen Street, Brisbane  74
Street map, Brisbane  79
"Merthyr" exterior  80
"Merthyr" exterior  80
Floor plan of "Merthyr"  81
Verandah of "Merthyr"  82
Ballroom of "Merthyr"  83
"Merthyr" drawing-room  85
One of Griffith's administrative minutes  91
Julia Griffith  107
A bay picnic  109
The first Federal Council  125
A political cartoon  137
Griffith's Coat of Arms  140
Jeanie Lucinda Musgrave  157
The mature statesman  187
The Lucinda  194
The Chief Justice in his Chambers  216
An extract from Griffith's judge's notebooks  218
Masonic Order of Procedure  247
Lieutenant-Governor  248
Llewellyn Griffith  252
A cartoon of the Chief Justice  260
Conferral of honorary degree  319
Family group  347
The old man  359
Preface

I first tasted the richness of the papers of Samuel Walker Griffith in the 1960s when I was writing the biography of one of his closest friends, William MacGregor. Since that date, Griffith has increasingly become a part of my life. I owe the idea of this biography to John La Nauze who, while giving a lecture on federation to my Australian History class at Queensland University in 1968, complained of the lack of a complete study of this "strange" founding father. While he recognised that John Vockler's mammoth undergraduate honours thesis was a considerable contribution - a view with which I emphatically agree - he thought that more was needed.

The search for "more" has taken me repeatedly to the main repository of the Griffith papers, the Dixson Library, and to the material, later acquired, downstairs in the Mitchell. Other Australian sources I consulted include materials in the Queensland State Archives and the Oxley Library in Brisbane, and papers held by the family, particularly Thomas Brown and Owen Griffith (whose interest and that of other relatives has been much appreciated). On sabbatical leaves in 1970 and 1978, I searched records in England, notably in the Public Records Office, as well as visiting his earliest homes: in Merthyr, Portishead and Wiveliscombe. In the United States, I used the Musgrave papers in the Duke University Library.

My Australian and overseas travel would not have been possible without the aid of research funds. I express my gratitude to Queensland, La Trobe, Griffith and Duke Universities, and to the Australian Research Grants scheme.

Regretfully, I was not able to spend an uninterrupted period in research or writing about Griffith. The initial sabbatical was followed by a fruitful period from 1971 to 1974 while I was teaching at Queensland University. In those years, research assistants gave me essential aid in exploring the mass of relevant material. Pioneer work was done by James O'Dwyer in the Queensland State Archives. Nigel Sabine was a full-time worker on Griffith for some three years; his meticulous coverage of the archives material, his help in visits to Sydney, and his enthusiasm were invaluable. Subsequently Kay Saunders, David Joyce and Ann Carrick assisted, particularly with

My move to Melbourne in 1975 meant I had even less time to work on Griffith, although La Trobe University research funds enabled me to visit Sydney and Brisbane at least twice each year from 1975 to 1977. La Trobe history department's research assistant, Nicholas Dawes, helped sort and index my holdings. Six months of sabbatical leave in 1978 enabled me to complete the overseas work I had begun in 1970.

Surrounded by piles of notes in my study (my wife, Barbara, called it the Griffith room), I began writing in November 1978. Teaching, administration and other research projects continued, yet progress in writing was steady. My work was stimulated by my being made a Research Fellow of Griffith University, where I visited regularly and addressed various groups. I am especially grateful to Jim Walter and to Raija Nugent (who helped tie up loose research ends and uncover new lodes of material).

I completed other studies on Griffith: in 1980 an analysis of his Queensland political achievements; in 1981 an exploration of his adolescence; in 1982 a summary of his life in 6000 words. Griffith also figured in my work on the origin of modern political parties and on the history of the Queensland labour movement.

By March 1982 I had completed a first draft, a massive 780,000 words (in a handwriting even worse than Griffith's, which was devotedly translated into legible typescript, mainly by Brenda Joyce). This first draft included voluminous detail which even I, as a most enthusiastic Griffithophile, did not expect to be published. This is not the day of the Victorian multivolume biography in which no action of the subject was omitted. After completing the first draft, I began to select more rigorously, notably from his many legal cases, as well as to summarise details so painstakingly acquired. I reduced the manuscript to 442,000 words by September 1982, and submitted this version to the University of Queensland Press. To my chagrin — but with justification — the publisher thought the manuscript was still too long.

At this stage I found help. Suggestions for further reductions, leaving the more significant material, were made by Heather Radi. Using the guidelines from her skilled study of the manuscript, I reduced it between December 1982 and March 1983 to close to its present length of 200,000 words. Uncomplainingly, Brenda yet again re-typed seemingly endless changes. For the final process of editing by the press, I record my gratitude to Vivienne Dickson, who little realised the painful scars reopened by some of her suggestions and questions.

After all these vicissitudes, I accept full responsibility for this published version. It contains what I see as the essence of Griffith's involved political and legal career. No biography can be definitive, and much more could be written on Griffith. I believe there is enough here to show the public man and the times in which he worked, even if his inner self remains partly hidden. I am not certain if I fully understand the "strange" man with whom I have been living so long. I regret that unifying interpretations have not emerged from my La Trobe psycho-biography courses, despite the stimula-
tion from Angus MacIntyre, as well as Dick Trahair and successive years of students. Intimations survive mainly in the footnotes.

I have had fluctuating concerns in Griffith: sometimes his major public achievements seemed vital; at others the details of his private life. I cannot solve the age-old riddle of the particular and the general, although I confess to finding more and more appeal in unique experiences. To me, Griffith is a fascinating multi-faceted person: involved in so much [he has been called a Renaissance man], with a passionate inner life often far removed from the cold outer existence imposed by his master, the law. Certainly, my life has been enriched through my acquaintance with him.
Samuel Walker Griffith, born on 21 June 1845 at Merthyr Tydfil, left that Welsh iron town before his first birthday. When he returned briefly in 1866, he described it as: "a low-lying town amongst high green hills and immense heaps of refuse iron ore which makes it grimy and dirty exceedingly." Unlovely as Merthyr may have seemed to him then, his youthful views were later eclipsed by his pride in Welsh achievements. This Welsh nationalism he found quite compatible with faith in the British Empire and love of Australia.

Samuel's parents had moved to Merthyr Tydfil shortly after their marriage on 18 October 1842. His mother, Mary Walker, had been living in Swansea, Wales, when she married Edward. Merthyr Tydfil was Edward Griffith's first charge as a Congregational minister after his course at London's Highbury College (1838-41). He was later to be pastor at Portishead (1846-49) and at Wiveliscombe in Somerset (1849-53).

The Griffiths were to have nine children, five of whom were born in Britain. The eldest, Edward, was born on 24 September 1843 in Merthyr Tydfil; twenty months before Samuel. Three girls followed: Mary (4 November 1849) in Portishead, Alice (10 May 1851) and Lydia (5 July 1853) in Wiveliscombe.

Edward was outspoken in the interests of Congregationalists and Protestants, cooperating with Baptists and Wesleyans in worship and in protests against the "monopoly in education by the Church of England, at the expense of Dissenters". He spiritedly defended his views in the Merthyr Guardian, asserting that "education should be free and unsectarian, and that its intention is to enlarge the mind and call forth the energies of the intellect, thus enabling the educated to judge for himself". He fought for the right of Dissenters to have their own burial grounds. He was less vocal about the plight of the working class, for though claiming to be "deeply involved in their interests", he did not attend strike meetings or publish complaints about the distress of the unemployed.

Protestants were in a minority in Merthyr: indeed all Christians believed their good example was being ignored. At Easter, the traditional secular Cefn fair attracted far more support than Christian worship:
scores under the influence of strong drink perambulated the streets, reeling, vomiting and quarrelling, in defiance of the distressed state of the times, the restraining of the law, and the precepts of Christianity.

The family’s health was one of the reasons for moving to Portishead in 1846 from the manse in the centre of unhealthy Merthyr:

in 1844, when the population had grown to 37,000 from a few hundred within a century, the sanitary conditions of the town were appalling . . . the inhabitants lived in overcrowded houses in narrow streets and alleyways in which filth and excreta accumulated . . . infectious diseases . . . caused an appallingly high rate of deaths, particularly among young children.

The boys, Edward and Samuel, survived epidemics of whooping cough, scarlet fever, measles, smallpox, typhoid and cholera, but their father suffered from the fumes of the iron foundries: “the atmosphere of Merthyr . . . proved injurious . . . and . . . seriously affected his voice”.

Portishead, a riverside town, was a far healthier place for the family: it was free of fumes, the working class lived under better conditions, fewer were unemployed, and there was no clash of nationalisms. The family lived in a two-storeyed house adjoining the chapel, where Edward and Samuel helped in the garden.

Edward’s congregation at the Merthyr English Independent Chapel had been small; he had an even smaller charge in Portishead. Its tiny chapel would not have held more than fifty, and he found few adherents in the surrounding villages. Edward continued to cooperate with other churchmen, joining in his chapel with “members of the Scotch, episcopal, foreign and other churches . . . at the celebration of the Lord’s supper.”

The family’s move in 1849 to rural Wiveliscombe was even more advantageous for them. A larger congregation — about one hundred — worshipped in an attractive chapel with its own burial ground. Edward cooperated with other churches, and served as secretary for the Somerset association of Congregationalists. His stipend was £225 a year [far more than a working man’s wages] and he lived rent-free. In November 1850, his church bought a new minister’s residence, a two-storeyed house with four bedrooms.

Samuel seems to have been encouraged at an early age to become independent. While Samuel was away from home, staying with relatives at the time of the birth of his sister Alice, his mother sent him “a pretty primrose from your own garden”. He was still away on his sixth birthday when both parents urged him to emulate his biblical namesake in seeking God, anticipating that his life’s mission was to “work for Jesus” and win “souls to Christ”.

Samuel’s father was his teacher in the paths of righteousness. He had given him a Greek New Testament for his fourth birthday, and Samuel was expected to read the Bible [though not in Greek] daily. His father believed in the right of everyone to read the Bible for himself, and his son had to share in this right:

The Bible, precious Bible — not a common book, but the Book of God — is too valuable to be lowered to a common position or to be treated as a mere school book, and it is too sacred as testifying of Jesus to be regarded as a fetish . . . Let us defend the Book, whilst maintaining our profound regard for it.
His father claimed that Samuel, by the age of seven, had read every book in his library. As these included Doddridge's *Rise and Progress of Religion in the Soul*, Bunyan's *Pilgrim's Progress*, Baxter's *The Saint's Everlasting Rest*, and works by William Jay of Bath, James Parsons of York, and John Angell James of Birmingham, Samuel must have had a heavy literary diet. Yet he probably read critically from an early age, for one anecdote has him writing copious notes on a sermon at the age of eight. Certainly he continued reading, his father claiming he had to "lock the door" of the study to keep Samuel out.

Samuel's early education became a source of contention. While his maternal aunt, Lydia Walker, was staying with the Griffith family, she taught Samuel, but her views proved not fundamentalist enough and Samuel was informed that "Aunt Lydia is not coming back to teach you again, but dear Papa will instead". Edward, who bewailed "the growing indifference to reading for instruction, and the growing propensity to read merely for amusement", must have attempted to restrict Samuel's reading.

But reading was not Samuel's only pastime. He kept pet rabbits, and a cousin recollected him "making clocks and windmills". Another female visitor remembered him and "Edward playing boyish pranks on her". He began to travel to relatives in Portishead and further afield as he became more independent.

In 1853, Edward accepted an invitation from the Colonial Missionary Society to work in Australia. Congregationalists in Australia (led by Dr Ross) and those visiting England, including David Jones and John Fairfax, had persuaded this society to support missionaries to their country, and a special Australian fund had been opened in 1852. Fairfax recommended sending a missionary to the Queensland town of Ipswich, and Edward was approached by the society in March 1853 as a "suitable minister for labouring in the colonies".

It was a difficult decision for a man of thirty-four, with four young children and another on the way.

Edward told his Wiveliscombe congregation of the offer and wrote to them on 27 April: "My beloved Christian friends, I told you at the last church meeting that I had been most unexpectedly requested by the Colonial Missionary Society to occupy a post of very great importance in New South Wales". At his valedictory service, delivered four months later, he related his decision to become a missionary to his acceptance in 1842 of "the honourable position of a pastor. I resolved from the first to labour wheresoever the Master might appoint, feeling that He would choose the sphere for the servant". He denied that his "thoughts had... been occupied with the desire to emigrate"; on the contrary, his first desire "to be a missionary to the heathen had been subdued by the consideration that I was disqualified by my family from entering on such work".

The call of duty from Christ was found compatible with Edward's necessary worldly negotiations for assistance. His new salary was £400, the family's passage money was paid, and they were given £100 for outfits. On 6 October 1853 the family sailed in the *Nile* from London. On the 124-day voyage Samuel kept a log, now vanished.

In Sydney, which they reached on 6 February, the Griffith parents stayed
with David Jones, "and other kind friends entertained the different members of their family". Dr Ross, the pioneer Congregational minister, was ill, so Edward preached at different churches and was invited to remain. He decided, however, that his mission was to Ipswich, to witness Christian truth in "the midst of error and sin".

On 1 March 1854, the family left Sydney aboard the 146-ton City of Melbourne. It was an uncomfortable voyage in a crowded steamer: twenty-three passengers and another twenty-three in steerage. The ship reached Moreton Bay on 6 March, but the tides prevented it from entering the Brisbane River until the next day.

Brisbane, a town of fewer than three thousand people, was most disappointing after Sydney, with its fifty-five thousand. The only lodgings the Griffiths could find were "most uninviting", and difficulties with river transport meant that it was 12 March before the Griffiths boarded the Hawk, of under fifty tons, for the five-hour river journey. Mary records the "beautiful scenery" along the river banks but also remembers the "serious drawback of intense heat" as they left the bay breezes and went inland to Ipswich, a town no larger than Brisbane.

The family was met by H. M. Reeve, a draper and a member of their Ipswich church. Their house, several miles from Ipswich, was "quite in the bush", and they were nervous of snakes and fearful of Aboriginals. Fortunately, their experience of the bush was brief, for after a few weeks the family moved to a house in Limestone Street in central Ipswich. Edward preached for the first time on 19 March, and soon Mary had domestic help, for which they had advertised even before leaving Brisbane.

Griffith's appointment was to the United Congregational Church in Ipswich, a church formed on 17 March 1853 by Independents and Baptists, united by an understanding that infant and adult baptism would not be discussed.

On 2 June the church deleted "United" from its title, although Baptists and Independents were still to enjoy equal privileges. Following this change of name, the Congregational Church Building Society in Sydney agreed in June 1854 to make a grant of £400 for a new building in Brisbane Street. The new "neat wooden church" which opened on 11 March 1855, the first anniversary of Edward's arrival, was the first Congregational church in the district of Moreton Bay, and the only one north of Maitland. In the interdenominational spirit, the Presbyterian minister preached in the opening service.

As he had done in England, Edward cooperated with other Protestant churches, preaching for the Wesleyan Missionary Society and the Evangelical Chapel in North Brisbane. Doctrinal problems within his own church were eased by the opening of a Baptist Church in Ipswich on 4 September 1855, but the debate continued as to admission of new members. Edward supplied the vacant pulpit of the main Congregational church in Sydney from 27 September to 11 November 1855. He resigned from the Ipswich church on 24 December 1855, but continued his ministrations until the New South Wales Congregational Home Missionary Society decided that he should exchange with J. T. Waraker of Maitland. The Griffiths left Ipswich on 30 July 1856 after just over two years.

Young Edward had begun school in Brisbane, while Samuel and the
elder of his sisters attended John Scott’s school in Ipswich. Another brother, Curwen, had been born on 16 May 1856.

As in England, the Griffith children had gardens. From his school in Brisbane, Edward enquired about their crops of maize and peaches. Their grandparents sent out seeds of “old England’s best apples and pears”. The children also kept goats and fowls. Samuel’s cashbook in 1854 shows that the nine-year-old was selling eggs from his fowls at 1½d to 2d apiece, while the fowls fetched from 2/6 to 1/6. He carefully balanced his income and outlays, paying 2/6 for a fowl, 1/- for “his share” of a drake, and 1/10 and 1/1 for maize — presumably as fowl food. He records occasional treats [3d for a quince, ½d for lollies] and small [2d] but regular monthly contributions to the missionary box. The year yielded a balance of cash in hand of £1.10.8½d. The small boy was rendering his accounts unto Caesar as well as to God.

In Samuel’s tenth year, in 1855, he went to stay with the David Joneses in Sydney. He and Edward Jones attended Horniman’s school in William Street, Woolloomooloo. Perhaps the more worldly life of the Joneses and the relative sophistication of Sydney helped to widen the growing rift between Samuel’s ideas and those of his parents.

The other Griffiths also stayed with the Joneses in Sydney on their way from Ipswich to Maitland which they reached in August 1856. They were to live in West Maitland until July 1860.

Maitland was not much different from Ipswich. Both were small country towns: Ipswich had a population of some 3,000 and West Maitland (exclusive of East Maitland), 4,441 in 1859. Both were riverside towns serving pastoral districts.

The Griffith family moved into a home in one of the streets of Horseshoe Bend on the river, but had to be evacuated in the June 1857 floods when the Hunter river rose twenty-six feet. Six weeks later, the Hunter rose again. Edward collapsed after assisting the children to safety. The family moved to Church Street to a new house, smaller than their riverside home, but above flood level. This proved wise, for in August a third flood was higher than the two preceding ones.

Besides the trials of these floods, the family suffered personal tragedy in Maitland. Their youngest son, Curwen, died on 12 October 1856, “at a time when there was a succession of illness in the family”. Mary was pregnant when he died and her next son (and seventh child), Harry, was born on 25 June 1857 during the floods. He lived only four months.

Griffith’s Congregational flock was small but optimistic, moving to a new larger church in High Street in December 1857. Griffith cooperated with other Christian churches, especially the Nonconformists. For instance, in January 1857 a public meeting of the London Missionary Society was held in the Free Presbyterian Church with Griffith, Reverend William McIntyre and four other Protestant clergy. Griffith thanked his Presbyterian “brethren for the use of the building and the warmth of their cooperation”. The annual meeting in February 1857 of the local branch of the British and Foreign Bible Society was also held in the Presbyterian Church. Edward became honorary secretary of the Hunter River auxiliary of this society. The Protestants were joined by the veteran seventy-one-year-old Anglican, Reverend G. K. Rusden of St Peter’s, East Maitland, who had been serving
Maitland in the 1860s.
(Engraving in Grossman House Collection, Maitland. Courtesy of Grossman House Collection.)
Christ in the district since 1834. Other clergy joined Edward at his own church for meetings of the New South Wales Congregational Home Missionary Society. As at Merthyr, he was sure he was in “the midst of error and sin” and needed Christian allies in the good fight. He continued his fervent support of the voluntary principle and his opposition to state aid to religion.39

Edward was an influential member of the Lord’s Day Observance Society, moving a resolution at its first annual meeting in December 1857 “to remind the public that it is the duty of every Christian to do what he can, both by example and precept, to do away with the evil of Sabbath desecration”. Examples he gave were “boating on the river”, selling a newspaper and “the practice of going to the post-office [on Sundays] for letters, and throwing additional work upon the post-mistress”.39

As in his previous pastorate, Edward accepted civic positions in Maitland, seeing these as effective ways of improving the morals of the people, especially through education. Edward served as secretary, vice-president and president of the School of Arts which, with a library of over 1,500 books by 1860, was seen as “a credit to the town”.41 He showed more liberality than other committee members in approving chess and draughts as games of skill. Edward also gave historical lectures and worked for the Indian Mutiny Relief Fund. His concern for public health in Maitland resulted in his becoming secretary of the Maitland Hospital Committee. On his departure, the local newspaper reported he had been “exceedingly popular”.42

Edward was restless in the confined environment of Maitland. In July 1860 he received two calls, one from nearby Murrurundi, the other, which he accepted, from Brisbane, now capital of the colony of Queensland.

Congregationalism in Brisbane had a shorter history than in Ipswich, for a committee had not been formed until 1858. The congregation had forty-eight members when Edward arrived in 1860, and was to increase to over three hundred before he left the pulpit in 1888. In the same period, Brisbane’s population rose from 6,000 to 100,000.43

Samuel did not move in 1860 with his family to Brisbane. While at school in Sydney and Maitland he had continued his cashbook begun in Ipswich. It records the purchase of school books for German, Latin, Greek, history and mathematics, the most expensive book being Smith’s Latin dictionary (£1.5.0) and he bought a desk for 18/-.44

No contemporary evidence exists to substantiate the tale that he was known as “Oily Sam”, willing to argue on both sides of a question. This tale was recorded by a fellow pupil at McIntyre’s Presbyterian school in Maitland, which Samuel attended from 1856 to 1859.45

McIntyre and his five assistant masters offered a wide curriculum: English, history, geography and “mercantile branches” as well as Latin, Greek, mathematics, French and German. The fees were three pounds a quarter for the wider selection as taken by Samuel.

Samuel’s scholastic record was outstanding. He won prizes for geography, mathematics, classics and writing, and in 1859 was dux of the school. A few of his school essays have survived, but they reveal little. He was remembered as a “swot”:
Foundations

heels back up against the school wall
your long knees to your chin and book to
your eyes on a blazing hot summer’s day
studying while the other boys were playing
tops or marbles when they wanted you to
shut your book and play.*7

Samuel’s studies had led him into paths different from those of his school
teachers and fundamentalist father. He experienced no religious conver-
sion; on the contrary, he planned further secular study at the University
of Sydney. He had been affected by the standards of Maitland, which were
reflected in the local newspaper, the *Maitland Mercury*, with its tolerance
and belief in progress through material advancement.*8

The University of Sydney tested Samuel’s intellect and developed his
personality. His proud parents would have had no doubts as to his intellect,
but shared a moral fear expressed by his grandfather: a fervent hope that
Samuel would be “preserved from being contaminated by evil example”.*9

Samuel applied for matriculation early in 1860, passing examinations in
Greek, Latin, arithmetic, algebra to simple equations, and geometry (the
first book of Euclid). He also sat for the scholarship examinations in classics
(Greek and Latin composition), ancient history and mathematics (arithmetic
and algebra, and the first four books of Euclid). Samuel, Cecil Stephen,
and a boy who was to become his closest friend, C. S. Mein from Sydney
Grammar School, won the first-year scholarships (each worth £50).
Samuel’s ex-headmaster was sure he was “fully entitled” to a scholarship,
and the Maitland school boasted that one of its pupils had rivalled those
of Sydney Grammar School. Yet whatever McIntyre or the school
thought,*10 Samuel realised that he had yet to prove himself, for the com-
petition at Maitland had not extended him.

He was the youngest of the nineteen who began Arts in his year, turning
fifteen on 21 June, although he was not unusually young: five of the
twenty-four matriculants in 1852 had been aged fifteen. Yet it was an early
age, physically and mentally. He enrolled for classics, mathematics, chem-
istry and experimental physics in his first year. This combination, unusual
to modern academic eyes accustomed to divisions between humanities and
sciences, was not uncommon in his day.

For classics in 1860 the prescribed books covered Greek and Latin
language and history (Herodotus’s *Egypt*; Sophocles’ *Antigone*;
Aristophanes’ *Frogs*; Aristotle’s *Poetics*; Livy Books I and II; Horace’s
*Epistles* and *De Arte Poetica*), as well as ancient and English history.

Samuel kept some of his lecture notes. One book, which was marked
“Aristotle Rhetorics”, perhaps betrayed his youth by the irrelevant and
inaccurate entry that “the cat’s song contains all the vowels MIEAOU in
regular order” and by a sign of normal escapism, the drawing of a sailing
boat.*11

The classics professor, John Woolley, was to inspire and influence
Griffith, who came to admire the precision of classical languages, using
them for epigrams in his legal judgments, and for entries in his diaries. His
interest in the past and its literature, especially the writings of Dante, must
also have been stimulated by Woolley’s teachings. In the annual examin-
ations in classics he was a prizeman, being second to E. Bowman, a second-year student.

Samuel’s mathematics lecturer was Professor Morris Pell, a senior wrangler and fellow of St John’s College, Cambridge. The curriculum for mathematics in 1860 would now be regarded as introductory to tertiary studies. Griffith did well, coming third to two second-year students. His third subject was chemistry and experimental physics, where he also performed well, again coming second to Bowman. He won the Vice-Chancellor’s Prize “for the best Composition in Latin elegiacs” in 1860: a translation from Thomas Moore’s Irish Melodies. It had been a very satisfying first year.

His second year was equally successful. He was placed first in classics and in mathematics, and was second in chemistry and experimental physics to J. Meillon, another second-year student. He again won one of three scholarships awarded for second year studies, worth fifty pounds. As in 1860, Samuel probably lived in lodgings travelling home to Brisbane each vacation. Presumably his parents’ pride in his achievements offset their regret at his failing to devote his life to Christ.

Samuel’s daily diary for his final year at university, and every year almost to his death, has survived, but its entries (sometimes in Latin or Greek) are brief, very rarely revealing his thoughts or emotions.

In his third year he moved into lodgings — Mrs Kean’s “horrid place”. He enrolled in classics, mathematics and logic, but dropped logic for legal studies. He won Professor Woolley’s Medal for translation into Greek trimeter iambics of part of Milton’s “Comus”. He also won the Chancellor’s Medal [valued at twenty pounds] for the best composition in Latin hexameters, the subject of which was “Phylae”. He read these prize exercises at the graduation ceremony on 17 May 1862 “pretty fairly: Greek text most confidently”. That year he won two university scholarships; the Barker for mathematics and the Cooper for classics. In Woolley’s opinion, Samuel was one of the four best students of classics of his decade at Sydney University. In 1862, he was awarded a medal for translating Shakespeare’s King John into Greek iambics.

The requirements for the degree of Bachelor of Arts were that a student, after being enrolled for three years, should pass written examinations in Greek, Latin, mathematics, natural philosophy, chemistry, experimental physics and logic. Samuel came first in chemistry, Greek and natural philosophy. All who had passed the ordinary examination for the B.A. were eligible to sit for the honours examinations in the following Lent term. Samuel decided to seek these higher grades. He may have been flattered when a fellow student, Bob Smith, addressed him as “the Right Hon. Sir Samuel Griffith B.A. K.B.”, even if the signature was “the Right Hon. Sir R. Smith Bart. Professor of Balderdash”. He shared top place with C. Murray proxime accessit. At the graduation ceremony on 25 March 1863 for his degree of Bachelor of Arts with Honours, Griffith read his prizewinning Greek verses.

Griffith had decided to study law. English jurisprudence was the only legal subject taught at Sydney University, and he had studied this subject in 1862. The university awarded a law degree (L.I.B.), but Samuel decided to obtain his legal qualifications in Queensland.
In Sydney, the young student had spent most of his time working, and his environment had had its drawbacks. The horrible lodgings proving too miserable, he had moved to Mrs Weignton’s. His diary does not record his going to church — although he noted Bible reading, beginning Genesis on 7 February. He did not attend any teetotal meetings; instead he began drinking. He visited the beaches, and he played cricket for the university, though none too gloriously, hitting “only one ball each innings”.

He played other games, including bagatelle and cribbage. He read outside his course work, borrowing books from the Sydney School of Arts library, finishing Dickens’s *Barnaby Rudge* in a week and *David Copperfield* in a fortnight. He chose as prizes Bohn’s works on lenses and emotions, and Herschel’s on astronomy. In May he also recorded reading Niebuhr. He wrote, or copied into his diary, undistinguished poems: one about a Southerner who kept exclaiming “O!” for a darky, whip, nip, or ship, “and thus he kept ohing / for what he had not; not content with ohing for all he’d got”: and another concluding “When will that dog star, wildly springing / warm our isle with peace and love? / when all heaven its sweet bells ringing / call my spirit to the fields above?”

He visited museums, including the Anatomical Museum, and attended a military review of volunteers. His wardrobe expanded: he bought a greatcoat in February, and in May was “measured for Frock-Coat. Bought cap and Gown [and] Boots”. The blue frock coat, which cost him £4, was matched by a grey vest (£1.4.0) and a pair of steel grey trousers (£1.16.0). At the university, students “were required to wear ‘plain black stuff’ gowns and trencher caps, a velvet band on the sleeve distinguishing the scholars. Fellows, professors and senior officers were to be saluted respectfully”.

Samuel was already conscious of clothes and their relationship to status, and it is certain that he would have insisted on having the velvet band, and would have saluted his superiors.

While in Brisbane on university vacations from Sydney, he had lived with his parents, adapting his activities to their way of life: attending church to listen to his father, and going to a teetotal meeting. He also helped around the house, for instance by building a duck pond. On 17 August 1862 his mother had her ninth and last baby, another girl, Jess. Samuel was well past puberty and his diary entries show that he was interested in girls: “had a lark with Annie”; “Tom [Cribb] thinks he knows a great deal about Annie and”;

“heard and thought a good deal about”;

“Annie away till Saturday afternoon”. But he also records going shooting (for quail), watching sports with a critical eye (“saw stupid cricket match”), rowing and bathing. Reading, both for pleasure and for his university studies, occupied much of his time. He borrowed books from the School or Arts libraries; he read Chaucer, and worked on his Latin elegiacs. One week he wrote 102 lines on “Phylae” for a prize essay, and he had other diversions, such as playing whist (reluctantly at times) and listening to music (the “Dead March” from *Saul* is mentioned).

Apart from an interest in politics, Samuel’s activities were not exceptional for a sixteen-year-old. When in Queensland he attended parliament regularly. In 1862, he wrote twenty-five articles on local politicians for the *Queensland Guardian*, using the pen name Charley Chalk. The articles
abound in allusions revealing "a fine classical mind still young enough to be a little over-anxious to display its knowledge".  

He praised the premier, Robert Herbert, which is not surprising in view of their common backgrounds in classical and legal education. Herbert, aged thirty-one, was a product of Eton, Oxford and the Inner Temple. "Mr Herbert", wrote Griffith,

... never rises for the mere purpose of making a sensation, which is the peculiar province of the true orator nor is he often in a hurry to rise ... yet he is an excellent speaker ... who, without any appearance of strategy, advances his argument in perfect order ... Whenever you see him rise to speak you have a comfortable feeling that light is about to break on the subject, and you are seldom disappointed. Rapid in his delivery ... without any apparent effort, in a tone quite conversational ... without one superfluous word, he will lay the whole matter before you with extreme simplicity, and make you consider how you had formerly failed to apprehend it ... Mr Herbert personally has the confidence of every member of the Assembly. No one doubts his ability, and in matters of real importance his honesty is unquestioned.

At the opposite extreme was his criticism of Robert Cribb:

His knowledge of mankind and of the world is mainly concerned with pounds, shillings and pence, nor does he consider it unworthy of his position as a legislator to be swayed confessedly by mercenary considerations. Of pure patriotism he knows nothing.

The criticism of Robert Cribb's preoccupation with money is ironic, considering Samuel's probable motives for writing the articles.

Irony is certainly present throughout his sketch of another parliamentarian, Arthur Macalister, the lawyer who was to become Samuel's legal and political mentor. Macalister

will have no one to blame but himself if he does not henceforward occupy a high political position ... His legal attainments are considerable, his experience large, his tone manly and straightforward, his character such as to command respect. He is in every sense fitted to serve his fellow-citizens with honour and profit, if he will only give himself to the work. We want his talents, we want his honesty, and we want his sterling common-sense: his indolence, vacillation, and apparent pusillanimity we can well spare.

His sketch of Macalister led Griffith to another verdict: "our so-called liberal politicians never know what they would be at"; they waste their efforts "on little personal squabbles and wordy wars". The effrontery of the sixteen-year-old emerges in his sketch of J. G. Jones, the member for Warwick: for his "downright stupidity ... egregious vanity, unfinished gentility, garrulous inanity, mock dignity", Jones should be handed over to Emery, the Australian Landseer, for a picture "of the fox in the lion's skin". About this time Griffith also wrote a long, amusing poem on the dispute between the government and Alfred Jones Peter Lutwyche, the first judge of the Queensland Supreme Court. Their differences had begun with Lutwyche's appointment in February 1858, and were not to be resolved until February 1863, when the appointment of James Cockle as chief justice ended Lutwyche's chances of promotion.

The effrontery of Samuel's Charley Chalk articles and Lutwyche poem was matched by his application for the headmastership of Ipswich Gram-
Foundations 13

mar School when he was just eighteen. On 14 July 1863, four months after he had graduated from the University of Sydney, he wrote to the trustees of this newly opened secondary school, using his first-class honours results ("than which no higher degrees of same level can be conferred") and his other awards as evidence of his suitability for the post. He referred to Macalister, a trustee, for one reference and concluded: "my private character is I believe, well known to more than one member of this Board, in whose hands I am content to leave myself". He may have been goaded into applying when he and his father were asked to support a rival candidate, Stuart Hawthorne. The trustees preferred the older man, noting Samuel's "total inexperience as a teacher".62

Before this application, Samuel had taken definite steps towards a Queensland legal career. He arrived back in Brisbane on 18 April and resumed his contemplations about the best way to be trained.

On my arrival in this Colony [Queensland] in the beginning of the year 1863 I originally intended to read for the Bar but having been advised by His Excellency the Governor and several other gentlemen that the best way to study the profession of the Law in this Colony was by becoming Articled to an Attorney I was induced to enter into Articles of Clerkship to Mr Macalister.

I have, however, never relinquished my original purpose of proceeding to the Bar and have expressed the intention to many in Brisbane but I have continued to serve under my Articles holding that I should have the option at any time of giving up the lower branch of the Profession and turning my attention to the higher without loss of time.63

On 11 May he signed his articles to Arthur Macalister, complaining in his diary that his two-month holiday was over: "indolentia iam finita" ("my time of loafing was now ended"). He was to be paid £52 in his first year, £100 in his second, and £150 in his third year.

Apparently Griffith became Macalister's representative in his Brisbane office. Macalister himself was based in Ipswich, which was declining in importance in relation to Brisbane.

Discovering that his time of loafing was indeed ended, Griffith realised that his criticisms of Macalister's indolence may have been unjustified. Samuel records working regularly (including on Christmas Eve, 1863) and other entries record "diligente laboravi" ("I worked very hard") and even "diligentissimi laboravi" ("I worked extremely hard"). By October 1864, after being articled for only seventeen months, he was able to represent Macalister on circuit travelling to Rockhampton. He records drinking with other lawyers after a case.

While in Brisbane doing his articles, Samuel lived with his parents in Weymouth Cottage in Adelaide Street. He must often have felt cramped by the presence of his five younger sisters (who in 1863 were aged fourteen, twelve, ten, three and one). His brother Edward, having become an accountant in August 1863, was working in Ipswich.

The relationships between father and sons further deteriorated. Edward, now forty-four, was disappointed that neither of his sons was following him as a minister of religion. He must have had doubts about the sincerity of their Christianity, especially in view of Samuel's university and other reading. The fundamentalist texts had given way to legal textbooks, such as Stephen's Commentaries, and, worse, novels that he borrowed from
libraries. His diary mentions books of Dickens (A Tale of Two Cities), Thackeray (Vanity Fair and Miscellania), Kingsley (Ravenshoe), Trollope (Orley Farm) and Marryat (Peter Simple).

Edward had also to adjust to his sons' sexual adventures, an interim stage possibly harder to accept than the probability of their eventual marriages. Young Edward had been rejected by one girl, but was now constant in his affections to Ellen Bickerton, whom he was to marry in September 1865. Samuel was no longer involved with the unidentified Annie, but with Etta (Hetta) Bulgin. Etta was two years younger than Samuel: she first appears in his diary on 29 January 1863 when Samuel was seventeen. Perhaps his application to Ipswich Grammar School in July was stimulated by a desire for immediate security with a salary sufficient to support a wife. Regular references throughout 1864 and 1865 show that Etta had become his constant companion, and in a poem he described her as Brisbane's "loveliest daughter", though despairing of her treatment of him. His diary shows that he often drank heavily in these years. Samuel's friend Charles Pilcher sympathised with his "sad plight" in February 1864, when he was unable to persuade Etta to go to a dance. Patrick Healy wrote seeking Samuel's advice on love, being confident that in affairs of the heart Samuel was "an adept". The seeker of advice was soon to advise and then to admonish:

Your books, and the ladies of course, I infer from what you say are the only congenial companions you have... and how do you stand in relation to the one lady who caused you so much anxiety? I hope you have declared.

In September 1865, Samuel had tried to make a definite commitment: he wrote to Etta, but received a letter from her rejecting his love. He received no reply to a subsequent letter. Later, in Sydney, he records Etta snubbing him. His brother thought Samuel's "great grief" was unnecessary:

It was foolish of you [to propose] for you are not in a position even to dream of marriage much less to think of it... how can you be sure that your heart could remain faithful.

Healy suspected that Samuel had phantasised Etta:

This woman that you thought you loved I say you did not, could not have loved at all: simply because she has proved herself not to be what you thought she was. If you loved at all it was an ideal creature that you loved.

Healy's accusation of phantasising, and Edward's charge that Samuel was "dreaming", anticipate Samuel's later romanticisation of Wales. Perhaps his insecurity is revealed by his relationship with Etta: rather than it being a link with a real person he may have changed the reality of Etta Bulgin into his ideal, "Brisbane's loveliest daughter". He tried to revive their intimacy later in 1867, but it was a dying passion, and soon both were to marry others, Etta in October 1869, Samuel in July 1870.

Another release from the dull reality of his legal apprenticeship was his persistent hope of winning a particular overseas scholarship. In 1862, while he had been at Sydney University, Thomas Mort had promised an award of £315 to be presented on "Commemoration Day 1865" to the graduate with "the highest Honours". Samuel discussed his chances with his friends, Healy seeing Charles Murray as the closest rival especially if
he gained medals with his degree of Master of Arts, which Samuel was not eligible to attempt until 1865. He was relieved when he won the scholarship, which was formally presented on 8 April while Samuel was in Sydney to arrange his journey to England and the Continent. He decided to leave in October, choosing to study the aesthetical, rather than the mechanical or engineering, arts, for which he had no liking. He preferred a search for the "beautiful" and read his writ broadly: "aesthetic" allowed him to visit "as many picture galleries as possible".

His friends sent congratulations. Two made significantly similar judgments: Healy saw Samuel's opportunity to visit Europe, "the fountain of civilization", as a way of escape from his living in phantasy; Pilcher hoped that the experience would make Samuel more practical, so balancing his other good qualities of cleverness, industriousness and energy.

Before he left, Samuel had to obtain the Queensland Supreme Court's permission to interrupt his articles, which was granted without difficulty. He was aware the judges were contemplating new regulations for the admission of barristers that would have required two additional years of articles. As he needed seven months' service to complete three years, he wrote to the associate to the chief justice to record his intention to apply under the existing rules.

After Charles Lilley was appointed attorney-general on 11 September, Griffith wrote to him also, stating he did not intend to practise as an attorney, but to proceed to the bar "so soon after the expiration of my Articles as the Regulations of the Court will allow". He continued, repetitiously and emphatically:

if the Judges . . . [rule] that the completion of my Articles will cause me a great delay in going to the Bar I intend this for an unqualified notice under the present Regulations — as I am prepared to abandon my Articles rather than lose an unreasonable time by completing them.

Griffith was satisfied that these two letters, combined with the influence of his friends at court, would secure his legal base.

He left Brisbane after the wedding of his brother, collected his scholarship stipend of £315 from the registrar of Sydney University, and sailed for Melbourne. He spent a fortnight there, visiting Melbourne's Free Library, an art gallery, Parliament House and Melbourne University. He relaxed on the voyage in the Dover Castle around Cape Horn. Besides a flirtation with a married woman, he enjoyed congenial drinking. He ignored his mother's pious farewell advice: "during the voyage seek God's help to resist every sort of temptation . . . and don't dear Sam be ashamed of Christ!" He was also "scornful" of his brother's more worldly comments about his flirtation: "I think you went rather too far . . . if you begin like this I will not give you much for your prosperity in life" and his drinking: "I hope you did not get into the habit of drinking too much".

Methodically Samuel recorded the ship's position each day, as well as the state of the weather. He had begun this habit in 1853 when sailing between London and Sydney, and was to continue it whenever he travelled. He began to study the Italian language, in which he hoped to be proficient before reaching Europe, and he read some French, including La
Dame aux Camélia, and most of Shakespeare's historical plays, few of which he had studied either at school or university.

Samuel Griffith reached Gravesend on 20 January 1866, and spent a month in England visiting art galleries and seeing relatives in the west. On 24 February, he landed at Le Havre in Normandy to begin his "grand tour" of Europe. He travelled along the Seine through Rouen to Paris. After viewing some of its art galleries, he went south through Lyons, Marseilles and Toulon to Nice. He admired the scenery, took a dislike to Nice and ruminated on the Australian idea that "we must have a bare plain before we can have a town". From Genoa, he travelled south to Naples, commenting that he had taken "somewhat foolishly the 2nd class" on the train. From Naples, where he had visited some of its five hundred churches, he travelled to Pompeii. By chance he met a Maitland acquaintance, Heywood Smith, who was studying at Christ College Oxford, and they decided to visit Mount Etna in Sicily. On the return trip to Naples via Stromboli, Samuel tested classical legend by estimating the force of currents between Scylla and Charybdis.

Griffith's second experience of Italian second-class rail took him back to Rome, which he found overcrowded in the Holy Week of Easter, and very expensive. Although he "went to St Peters in a frock coat" and visited the Vatican galleries, he was excluded from admission to the Basilica. He tested the classics again by visiting two rival sites of the original Tarpeian Rock, noting that each of them was high enough to cause death to a person cast from its summit.

Samuel's wanderings took him by rail through Terni (where he cited Byron's description of the falls in Childe Harold) and Foligno. A diligence took him to Toricella on Lake Trasimene. He had to sleep in the diligence, and borrow a small sum before being able to reach Florence. From there he travelled in northern Italy, where his grasp of Italian improved sufficiently for him be able to understand and record a sermon in that language.

Leaving Milan he crossed Switzerland and western Germany to Belgium. He sailed from Antwerp back to London in late May. Griffith was to spend about six months in the British Isles, much of it in London, visiting art collections in the British Museum and other galleries. He made several forays out of London: to Somerset in February; Oxford in June; Somerset again in July; Bristol, the Lakes District and Scotland in August and Wales and Bath in September. On 18 November he sailed on the Yangtze for Australia, resuming work for Arthur Macalister in February 1867.

The main purpose of the scholarship had been to study the aesthetic arts, and he was bound by its terms to present a report on his observations. He described the Victorian Legislative Council chamber as "magnificent ... a fit place for calm, wise and deliberate legislation", so associating art and function. As a University of Sydney graduate, he was perhaps prejudiced in finding that Melbourne University had no pretensions to architectural beauty. Of the collection of paintings and statuary in the Melbourne Free Library, he did "not profess to be a judge". The scholarship required him to judge, and he was forced to make decisions, using criteria far different from those of his legal work. The absolutes of Greek philosophy, such as...
the concept of objective beauty, familiar from his classical studies, were far more relevant. The judgments recorded in his diary are largely subjective, though his final report attempted to be more objective.

The quality of the painting of J. M. W. Turner (1775-1851) was currently under debate. Griffith had read Ruskin's passionate defence of Turner's genius, but was unable to appreciate Turner: "I could only see great blotches of colour". He found the works of Quinten Massys "curious" and was not impressed by Van Dyck, nor by Eustace le Sueur: "I don't care if I never see any more of them". After his first visit to the Louvre, he was "not much impressed except by some of Raphael's works which ignorant as I was I thought very beautiful".

His greatest praise was for the work of Rubens, particularly those paintings he saw at Antwerp and he described Rubens's "The Descent from the Cross" and "Crucifixion" in considerable detail. He enjoyed the landscapes of Rysdael, and noted that one of Breughel's canvasses was "a wonderful painting". He also admired the works of Sir Edwin Landseer. He claimed to be developing clear preferences: on revisiting the British Museum he said, "I confined myself chiefly to the works of art in which my taste had become strongly set since I began travelling", but his criteria are hard to discern.

Griffith made similar snap judgments on sculpture and architecture. He showed critical appreciation of the Laocoon group at the Vatican, praising the "wonderful and accurate tension of all the muscles such as might be expected from the excitation and horror of the situation" but condemning "the modern restorations [which], as usual, appear to have been made by one who either had not studied the general 'idea' of the author, or understanding could not work it out". The architecture of Paris impressed him.

Samuel's own conclusions suggest that he had profited by his scholarship:

When I first saw pictures I looked at them as a duty and with little pleasure. I ended with finding them a source of great and true enjoyment. So it was with Statues, with Architecture, and afterwards with natural objects ... let us have beautiful churches and beautiful houses in places where we can enjoy and profit by them.

Griffith made comparatively few comments on European politics. In Bologna he noticed concentrations of soldiers, whom the Austrians were to use as an excuse a few days later for not disarming in Venetia, "which greatly assisted in bringing on the war". In Venice he noted antipathy toward the Austrians, while in Verona he saw ambulance wagons being prepared for active use, and estimated that half the population were soldiers. Near Ortigia he had travelled with "a boatload of Sicilians singing the praise of Garibaldi"; in Palermo "in August or September 1866 the flesh of Italian soldiers was sold by the pound weight, and the women tore a man to pieces with their teeth". Near Terni he met a goodhearted intelligent fellow, and conversed freely of politics. He had been with Garibaldi against the Papal government, and was delighted to tell how the people of Terni and the neighbourhood celebrated St Joseph's day, by way of doing honour to the great Guiseppi, while the King's birthday was comparatively neglected, except by the soldiers.
He was to draw lessons from the problems besetting Italy's divided states when the colonies of Australia planned to federate.

The outbreak of the Austro-Prussian conflict in 1866 after he left Bologna, as well as news and rumours of wars within Turkey and eastern Europe, may have limited his travels. Perhaps that was why Samuel did not cross from Italy to Greece, the centre of pilgrimage for students of the classics. Cost was another inhibiting factor; with very little saved from his articled clerk's salary, he relied on the grant of £315. The voyage from Australia had cost £50, and his brother Edward had prudently suggested that he bank £70 for his return fare and expenses. This left £195 for the ten months he spent in Britain and Europe, an average of less than £20 a month. His British expenses were about £25 a month. Costs on the Continent varied, but would not have been much less, especially as he experimented with new tastes, including the "peculiar Venetian beverage of iced coffee — (wish someone would introduce it here [Australia])". Samuel was temporarily broke before he left Europe, having to sleep in a stable near Baden-Baden: "What a fix you must have been in when you were without money!" commented his mother. "What a fortunate thing to have an honest face". Samuel raised the possibility of a loan with Edward, but was refused.

Both brothers were victims of the financial crisis of 1866, when bank crashes in London had drastic effects on Queensland. The Consolidated Bank, in which Samuel had deposited his £70, temporarily ceased trading. When it re-opened it paid only twenty-five per cent every three months from 1 July 1866. He had to arrange for a loan through Edward's bank, the Australian Joint Stock, with Edward and his father as guarantors. On his return in February 1867 he was still in debt. He presented Edward with a draft for £53.17.7d and promised to pay a further £50.

Samuel took an interest in universities while overseas. He went to Oxford for the annual commemoration and recorded the ceremony in considerable detail. At the invitation of his friend Heywood Smith, he also attended the operating theatre of St George's Hospital, London, where he witnessed "the excision of two tumours and a toe-nail". The visit may have been motivated by an interest in public health or concern with his own health, since he suffered from haemorrhoids. He recorded, in considerable detail, a survey of Woolwich Arsenal.

Other journeys were social: he found himself involved in the affairs of Macalister's son, Willie, an alcoholic. Willie wrote to him from an institution on the Isle of Skye asking for money, admitting that he was broke after going on the spree in Glasgow. He was made responsible for Willie when he was released from Skye, but despite the efforts of Samuel, and of Willie's relatives, Willie was soon confined again.

Soon after his arrival in England, Samuel stayed at Wilton Lodge, Taunton, with his uncle the Reverend William Griffith. The parson had a quiverful of eleven children, including eighteen-year-old Emma, with whom he fell in love. As usual, he told all to his brother Edward, who advised him to

make love to her possibly you have done so already . . . would not you like her to enliven you in your travels lone and dreary as they must be without a female companion.
He apparently proposed to Emma before he left for the Continent, though without speaking to her father, who was much vexed when he later heard of the proposal. Emma gave no immediate reply, so his study of aesthetic art in Europe was coloured by this inconclusiveness. Samuel confided his dilemma to his friends, who asked anxiously for news of his progress in the Taunton affair. Eventually Emma decided to reject him. Her twenty-five-year-old sister, Eliza, as a sympathetic go-between, advised Samuel to seek solace in Christianity and to cease being a "cynical misanthropical doubter". She also urged him to be less reticent: "your letter . . . told me none of the many things I should like to know about your own thoughts and deeds". The other sister, Adele [aged twenty] showed no such anxiety, being "nasty" towards Samuel.

When he became engaged in 1870, Emma wrote to him:

I am sure Maitland will hold its head the higher that one of its daughters has been considered a worthy mate for the rising young barrister of Queensland . . .

I hope [Julia] will not spoil i.e. kill you by kindness or by any other equally lingering death as the loss to mankind in general would be beyond her power to estimate.Emma did not pine away after rejecting him: she married and had four children.

In comparison to his dalliances with these cousins at Taunton, Samuel's visits to his other relations must have been anticlimactic. His mother, indeed, chided him for spending too much time at Taunton before he went to the Continent, because he did not see other relatives, some of whom might have been affronted. Samuel had not visited his uncle Bailey Griffith ("Did you really leave London without seeing him?" his mother wrote, "If so, you were very naughty") nor his aunt Jane [on the Walker side] at Manchester [whom his mother thought was "not one to be slighted!"] or his maternal uncle, John Walker. In the five weeks he had spent in England, Samuel had visited four sets of relatives, including both grandparents. His grandfather, Peter Walker, living at Portishead with his daughter Lydia, was known to be dying, and Samuel's visit was "so gratifying". Samuel's aunt Lydia, who had taught him as a boy, he found "congenial". He seemed less comfortable with his paternal relations, his mother complaining that he had not "said what you thought of the good folks . . . at Bath especially Grandmamma".

On his return from Europe, Samuel conscientiously paid his respects to his relatives. He saw Bailey Griffith; went to Manchester to Aunt Jane; and saw John Walker in Bristol. He revisited others, as well as the Taunton cousins. Peter Walker died on 14 August, and Lydia invited Samuel to the funeral. He was, however, in the north, travelling through the Lakes District to Scotland, where he stayed with the Macalisters in Blantyre and with his aunt Julie Cunliff in Glasgow. On his return, he visited the Walkers in Weston-super-Mare, going on from there to Taunton and then to Wales. This was the visit to his birthplace at Merthyr which so disappointed Samuel, who recorded his chagrin at its overall dinginess. He stayed in the Castle Hotel on 18 September, and on the next day called on "the Rev. Mr Johnston who now has charge of the Church which was my father's". That night he noted seeing the Cyfarthfa iron works with its four thousand
hands, and must have realised the grimness of their lives. He escaped to
greener parts of Wales, better suited to his romanticism than this glimpse
of reality. He had also revisited his old home at Wiveliscombe, and was
disappointed "at the size of the place and the houses which are much
smaller than I thought". 86

Samuel travelled home with Glanville Wills, the son of H. O. Wills, of
tobacco fame, who was a friend of Edward Griffith. Samuel had stayed
with the Willses at Bath in September, and was again with them in Bristol
in November. Wills entrusted Samuel with the passage money for
Glanville, and also arranged for the furnishing of his cabin with blankets
and counterpanes. Glanville seems to have hoodwinked his father about
his allowance, and to have made Samuel his ally in his plottings. He lent
Samuel ten pounds, and the two young men became close companions on
the homeward trip. In the mornings, Samuel read and worked on the
report on his scholarship. In the evenings, he played cards or sang, usually
with Glanville. 87

Samuel was always reticent about his beliefs. Eliza, his cousin, had
found him a "cynical misanthropical doubter" and Heywood Smith had
similar perceptions:

at times remember our talk when lying in a coil of rope one night in the bay of
Puteoli, and let not your mind be distracted by metaphysical doubts, only rest
simply on Christ's substitutional sacrifice and all will be well. 88

Samuel probably remained a Christian. He certainly continued to attend
church regularly every Sunday, though his move from fundamentalist doc­
trines is suggested by his attending Church of England services. In London,
for instance, he attended St Albans.

Evidence comes from his brother who as a rising bank accountant and
the son of the leading Congregationalist in Queensland, was likewise
expected to conform. Edward's comments to Samuel are applicable to both
brothers ' 'I manage to feel rather sleepy and lazy when Sunday comes but
I generally appear in chapel 'twice like a dutiful son' '. Edward referred
to his father impersonally, "the Rev. E. G." was the usual form [thus at
Robert Cribb's death, "the Rev. E. G. preached " or sometimes "the pater"
or "the Paternal". His mother he usually referred to as "Mamma". 89

Besides differences with their parents over their fundamentalism, the
boys also ignored other parental precepts. Samuel and Edward drank regu­
larly, although their parents advocated total abstinence and must have
known of their children's habits. Edward reminded Samuel of his twenty-
first birthday party (24 September 1865) "when a few of you forgot your
equilibrium". 90 Their sister Mary, however, clearly took her parents' side.
She was to publish the Memorials of the Rev. Edward Griffith which almost
qualifies as hagiography. Her letters to Samuel typically recounted details
of prayer meetings. 91

Alice seems to have been closer to the boys. Edward reported a fuss with
his parents when he invited Alice and not Mary to a convivial party. 92
Alice, in her letters to Samuel, rejoiced in having left school, and recounted
political and social, rather than church, news. After her marriage, she
remained close to Samuel in location and interests.

His mother was well aware of the difference in their ways of life, know­
ing that hers was shared by some of her relatives, and telling Samuel firmly that “aunty says she is sure their ways won’t suit you’’. That Samuel’s letters to his brother were withheld from their mother was hurtful to her:

I could wish my boys felt sufficient confidence in their mother’s judgment and love and sympathy to let her know a little more of their own private concerns — it would often have relieved them greatly to speak to her as to a kind friend.53

Neither of the boys doubted her love and sympathy, but the differences in their respective approaches to life seemed to them to make her judgment usually irrelevant. Yet despite these differences Samuel was to live with his parents again, and knew that he would be welcomed by them. He believed his mother when she wrote, “it does seem strange here without either of you, but we shall both hope to have you home again”

Samuel’s return was an aid to their finances: “it is as much as ever we can do to make both ends meet. When you are home again it will be some relief to poor Papa”.94

The depression of the 1860s had a severe effect on the finances of the church. Edward for some time gave up a considerable portion of his salary. It had been £325 in 1861, was raised to £400, and then cut to £300 in 1868. In response to his appeal for aid, the Colonial Missionary Society gave him £25 and, in August 1867, lent him £75.95

Samuel’s parents, depressed by the physical and spiritual climate of Brisbane, thought of returning to Britain. They asked Samuel for assistance in obtaining a secretoryship or vacant church for his father.

Mary’s world was centred on her home, and her outside interests stemmed from her Christianity. Thus Mary told Samuel that there was “very much distress here at present from the number of emigrants lately sent out all of the poor class. Many of the men have died and their widows and children are supported by the public”; and that she had joined the management committee of Mrs Douglas’s orphan establishment where “so many poor children . . . constantly applied for to be taken in”. Her solution to these problems was increased efforts by the church, which she hoped her boys would join: “you and Edward may both do unspeakable good here were you to identify yourself with the cause of Christ and the church of Christ”.

Samuel was later to seek solutions through the State, rather than the Church.

Another vastly different inheritance from his parents was Samuel’s consciousness of social gradations. His mother had referred to “the poor class” and would have classified her own social status, and especially that of her husband, as above that station. When Mary visited the Paynes living at the Brisbane suburb of The Gap, she told Samuel that the family “felt highly honoured by my visit”.97 That Edward was even more conscious of social hierarchies is shown by his criticisms of the establishment in Britain, and his awareness of the importance of social recognition for Congregationalism and for himself as the leader of that church in Queensland.
His social awareness was inherited by Samuel, who had already expressed his ambition to serve in the "higher" branch of the legal profession, and who was to become increasingly conscious of social gradations.

Samuel's father's letters, in comparison with those of his mother, were less frequent and less revealing of his feelings, which were concealed in Christian benedictions: "may God ever have you in his safe keeping both today and ever is the fervent and constant prayer of your affectionate Father". Edward was aloof, reluctant to bare his feelings even to his son, and Samuel shared this reticence. His father was aware of Samuel's ambitions and kept him informed, as did his brother, of political developments in Queensland. Most pointedly his father, in telling him that other parliamentarians had begun to study for the bar, said "you see your competition".98

Irascibility was one trait of Samuel's character that does not seem to have been inherited, although it may well have been a characteristic of his father, who also customarily suppressed his emotions. His brother claimed that Samuel's temper was worse than his own. Samuel had become angry with a man and a woman at a dance: "he got you so riled about her and when he took her away from dancing with you by pleading previous engagement . . . you told him . . . with eyes flashing with fire 'you lie you pig'".99 Another argument in Brisbane was not ended until Samuel received a written apology from the other party: "I was rather hasty in the expressions I made use of to you the other day, nor did I mean it in the light you seemed to take it. I much regret the circumstances and trust you will kindly accept this as an apology".100 This irascibility was related to Samuel's vanity, his inflated sense of his own importance; he found few worthy of his confidences, whether parents, siblings or friends.
Early Career

Chaos of thought and passion, all confused

Pope

Samuel Griffith, the wandering scholar, returned to his legal studies immediately on his arrival from Europe. He reached Brisbane on Monday 18 February 1867, and two days later resumed his articles under Macalister. He had seven months to serve, and he was impatient to begin his career.

Those seven months meant a return to his previous Brisbane existence. He lived in his parents' home, which required delicate adjustments after his fourteen months of independence. Similar adjustments had to be made in resuming contact with old friends, including Etta, but the most difficult transition may have been the return to legal studies after the aesthetic diversion of his European tour.

Samuel gave priority to his legal studies, for his ambitions in any field depended upon his entering some steady position. The law examinations covered most fields, and he had devoted little time to legal books while overseas. He was to face four separate papers: in equity; personal and real property; pleading and evidence; and general topics. The new rules specified that candidates should also have a knowledge of admiralty, matrimonial, insolvency, criminal and contracts law.

The formal date of the end of his articles, 30 September 1867, was a Monday, so a farewell address was presented to him on the previous Saturday. While waiting for his examinations, he was engaged in other legal matters. His responsibilities had increased and he seems to have been handling some cases as if he were a qualified lawyer. One case involved an acquaintance named Sabine, with whom Griffith had been sailing, who was arrested on 13 September. Griffith prepared his defence. He was acquitted on the day of Griffith's law examinations.

The Board of Examiners of the Supreme Court met on 7 October and approved that Griffith be examined under the old rules. The examinations followed immediately. On the fourteenth, Griffith recorded being "called to the Bar in complimentary terms". Lilley, in moving his admission before the chief justice and Judge Lutwyche, reported that Griffith had passed his examinations most creditably, and the chief justice said that the court had much pleasure in granting the admission.
Griffith joined a small legal fraternity of about a hundred. Besides the two Supreme Court judges there were three District Court judges: E. Sheppard, J. G. Long Innes and C. W. Blakeney. He was the twenty-sixth qualified practising barrister. Five of the barristers had had parliamentary careers, and they were to be joined by four others in the 1870s (F. A. Cooper, Griffith, J. K. Handy and E. G. MacDevitt). Three other parliamentarians — B. Cribb, J. Dwyer (both MLA) and W. Wood (MLC) — had begun studying for the bar in 1866. Griffith embarked on a legal career but there was a strong possibility, especially considering his expressed interests, that he would become involved in politics.

The other branch of the law, the lower in Griffith's opinion, was also numerically limited: fewer than fifty solicitors were practising in nine Queensland towns.

Griffith's eagerness to join this small band of qualified lawyers was manifest from his earlier declarations. His diary makes it even clearer, for the entry about his admission continued: "too late for Briefs in District Court". His assets were few, and his law library (which was valued at less than ten pounds) fitted easily into the chambers he shared with G. W. Paul.

Although he received two briefs the day after admission, he had little to do. His first appearance was probably in the police court on 18 October in the Sabine case he had been handling before admission.

The first days in his new rooms were not encouraging: "did nothing all day. Read at School of Arts. Had name painted up" [22 October]. "In Chambers all day" [23 October]. Symbolically, and romantically, he read Jane Eyre that evening.

Forty-six years later these early disappointments could be discounted, however discouraging they were at the time: "I look back to my early struggles at the Bar, which were not very severe struggles, because I remember my time was so occupied with my professional duties that I had not as much time for cultivating general literature as I should have desired." Fortunately, he did find time for reading, and the diary of his first year lists, besides Charlotte Bronte's Jane Eyre, Dickens's The Pickwick Papers and Nicholas Nickleby, Thackeray's Esmond, Kingsley's Westward Ho, Eliot's The Mill on the Floss, as well as the Chronicles of Catlingford and Lady Audley's Secret.

But Griffith soon became busy. Before the end of the year, he had appeared on two days in the Supreme Court. In another case in a lower court, appearing as a junior to E. G. MacDevitt, he had to be excused to move in another court for a grant of letters of administration in a deceased estate. He had also appeared in the circuit court at Ipswich on 4 November, and he was receiving his first payments. "Brief from Wilson in P.D.Ct. 2 guas. Refund from Macalister 1 gua." By 1868 these small amounts were becoming substantial, one case earning him £45.14.6 and another £16.12.6. The most remunerative briefs for a young counsel were on circuit. In 1868 he travelled to hearings in Ipswich, Toowoomba, Rockhampton (thrice) and Maryborough, being away from Brisbane a total of over eight weeks. Overall it is unlikely that he cleared £500 in his first year. However, by his third year, in 1870, when he decided he was earning enough to be able to support a wife, his earnings had increased substantially. His diary shows receipts of £1,000: £391.5.3 to 30 June, and £608.6.6 to 30 December. His
expenditure totalled at least £564. He took out assurance for £1,000 in the Mutual Life Company and £700 in the Mutual Provident (paying premiums of £100 for the latter) and insured his furniture and library. He was able to make gifts to his sisters: a necklace and £10 to Mary, and a watch worth £25 for her twenty-first birthday; and a necklace worth £5.10.0 for Alice’s nineteenth birthday.9

Skill as a barrister cannot be estimated either statistically or financially. The number of cases in which Griffith appeared, and his increasing rewards, are only indications of his acceptance by solicitors. Unrecorded, but often important, was his advice to other practitioners in cases that were settled out of court.

In his initial apprenticeship period of thirty-three months (1867-70), the number of cases in which he appeared in the Supreme Court increased from the one in 1867 to seven in 1868, dropped to four in 1869 and numbered seven up to July 1870. These nineteen were, as might be expected of a tyro, about half his eventual average of once a month.10

In his first case, Griffith failed to convince the chief justice that a promissory note had to be stamped before it had any legal standing.11 He was also to lose his next Supreme Court case (at Rockhampton) where, with MacDevitt and Hely, he argued an appeal by Thomas Griffin against his conviction for murder.

In the Griffin case, a policeman was accused of killing two of his men. The two troopers of the Clermont gold escort, on their way to Rockhampton with money, were found dead in their camp on the Mackenzie River. Death was due to poisoning and shot wounds. Griffin, who was arrested four days later, was the police magistrate and gold commissioner at Clermont, west of Rockhampton. His motive was allegedly to conceal his theft of government money which, to make it more bizarre, he had stolen to repay money entrusted to him by Chinese diggers. At the trial, MacDevitt was the court spokesman, with Griffith and Hely active behind the scenes. Griffith interviewed Griffin in preparing the defence. The trial took seven days and Griffith’s record of its last day reads: “Prisoner sentenced to death. Judge overcome, terrible scene . . . Bathed. Conversation with Lilley. Went to theatre etc.”12

Griffith’s emotions are concealed. Was he already so conditioned that Griffin was only a cipher in a legal game? Did he talk jokingly with the opposing barrister and then dine and drink and watch a theatre performance, unmoved by Griffin’s fate? Was he reconciled to violence as a normal circumstance of life in frontier Queensland and, indeed, in all Australia?

A year later, again in Rockhampton, the experience was to be repeated as Griffith watched a judge don the black cap and sentence another man to death. His diary records only the bald summary: “Sentence of death passed at 7.15 p.m. Went with Murray to Dr Callaghan’s and saw Griffin’s skull. Went to theatre with Murray”.13

Murder cases often involve complex legal points, and these could well have been Griffith’s main concern. When on circuit, he attended other hearings, recording in Rockhampton on 28 September 1869: “Heard Blake’s speech in defence of Rankin [very good]. Acquitted by semi-direction of Judge”. He continued, “had whiskey with Blake in evening and out late with Baird”.14
Griffith's legal cases provided vicarious experiences. He was unlikely to be involved in murder or horse-stealing, but may well have been forewarned by the practice of some of his clients, for instance, on the property rights of women.\textsuperscript{15}

Griffith maintained high standards for his profession, appearing successfully for the Law Society of Queensland in moving for suspension of an Ipswich solicitor who had misused trust funds. Likewise he acted for the board of examiners in opposing an application of an articled clerk to count a period of service (six years earlier) in Victoria. Unlike Griffith before he left Brisbane on his scholarship, this clerk had made no application to count the earlier period: "he seems to have slept on his rights", was the comment. The claim was disallowed.\textsuperscript{16}

Most cases reaching the Supreme Court tested legal principles, and even as junior counsel, Griffith's education was enhanced by the background reading required. He appeared in a great variety of matters, including company law, small debts, impounding cattle, property, embezzlement, contracts and probate. As the bar was so small it was impossible to specialise.

Besides his Supreme Court appearances in Brisbane and Rockhampton, Griffith also took cases in lower courts in Brisbane and country towns, including Ipswich, Maryborough and Toowoomba. A visit to Toowoomba in January 1868 was typical of his experiences in country towns. He arrived by train on a Saturday night, put up at the Royal Hotel with another barrister, J. Gore Jones, visited friends that night and rested on Sunday (being plagued with a "slight attack of diarrhoea"). The next day he spent in court. On Tuesday, he went horse-riding and paid social calls, received a brief from a solicitor, and held a legal consultation in the evening. On Wednesday he was in court for a case in which the plaintiff was non-suited. He dined with the sheriff in the gaol, played billiards with a friend, and relaxed over drinks with the friend and his wife. He left Toowoomba on Thursday and returned to Ipswich.\textsuperscript{17}

By July 1870, Griffith had become a busy barrister whose services were much in demand. Two diary entries, which meticulously note details of matters now mostly untraceable, give the flavour of his legal existence: "Received £1.11.3 for Brief . . . and £1.10.0 from Hirst. Conference in Warde Bros. Retainer in Coleman ats Piper. Retainer in re Cooper ats Jones. Saw blood stain in R v Pender. Worked till 6 p.m. Got Arnold on Insurance. Macpherson gave me Taylor. Drew Plaint in Ryan v Daly. Got Arnold on Insurance. Macpherson gave me Taylor. Drew Plaint in Ryan v Daly. Went to Meins in evening" (28 January 1870); "Wet day. Came in from Hardings. Conference in re Toms. General Retainer re Cooper ats Jones and Conference with Harding. Read. In court all day. Received letter from Julia and wrote to her. Wet day. Paid subscriptions to School of Arts. Drew affidavit re Roche in evening" (31 January 1870).

These entries show that law did not occupy all his time. Who were his friends, male and female; what were his social activities; what were his other interests?

Even if aloof and self-centred, he needed social outlets. His Sydney University friends were mainly in the south. He had seen Charles Pilcher in Sydney the day after he returned from England, and presumably had been given perceptive if long-winded advice on Emma, not to mention Etta. Unfortunately none of their correspondence between 1867 and 1870 has
survived. Charles Mein, who was in Queensland, was an intimate friend. The young men shared the same occupation, were close in age (Mein was four years older), and had similar interests. They spent a holiday together on Moreton Bay at Sandgate, and there and elsewhere they bathed, sailed, rode, and walked, as well as drinking, dining, and playing billiards and cards (including whist and bezique).

Samuel had other friends among the barristers, such as Henry Hely and Baird (who had been admitted on 26 February 1869), and he was friendly with the Warner family, de Costa and Robert Biggs and (in Ipswich), Ben Cribb and the Hawthornes. He soon fitted back into Brisbane society, his overseas trip having interfered little with his acceptance by his peers. Glanville Wills had come to Brisbane in April 1867, and the young men spent a Saturday afternoon sailing to the “head of Norman’s Creek [where a] fish jumped into the boat”. They were accompanied by Sabine, presumably the man Griffith defended in court a few months later. Brisbane’s population was small, and Samuel’s acquaintances came from various occupations; in this socially mobile environment the young made their own friends, certainly not following the choice of their parents. Sect also meant little to Samuel, especially as he was not adopting his father’s way of life, although it was probably the latter’s position, as leader of the Congregational church, that led to the initial invitations to Samuel and his brother Edward to attend Government House functions. Samuel had consulted Governor Bowen about his law career, and records on 4 January 1868 attending Government House and seeing Bowen embark: “Went down the river . . . with Etta and saw Governor off”. He presumably enjoyed a dance at a friend’s house as much as a Government House reception, and he once attended a Bal Masque dressed as a senator. In 1870 he was invited to the Mayor’s Ball and the Bachelors’ Ball.

Another social outlet was through his membership of the Freemasons. He regularly went to the meetings of the Victoria Lodge, was appointed its auditor on 9 July 1867 and its treasurer on 14 January 1868. He attended the Convocation of the Grand Lodge on 30 March 1867. Why he joined the Masons is unrecorded; perhaps it was for the social life it offered, or perhaps he subscribed to its beliefs. Subsequently he was to rise in the various orders of the lodge and, outwardly at least, expressed strong support for the movement.

In addition to his lodge responsibilities, Griffith was an office bearer of the local School of Arts, preparing a report for it on 5 April 1869. He had used its library for academic and general reading, and supported its attempts to spread the advantages of education to an adult group. He also attended meetings of the Philosophical Society, which had been formed to discuss leading contemporary issues, as well as attending other lectures, such as the talk on heavenly bodies that Professor Smith gave at the Baptist chapel.

Stuart Hawthorne, Samuel’s successful rival for the headmastership of Ipswich Grammar School, was well aware of his talents. Samuel stayed with the Hawthornes in Ipswich, and was an external examiner for scholarship candidates in 1868, and also in 1869 and 1870, after Hawthorne had left the school. He was examiner also for Brisbane Grammar School, of which he was a Trustee from 1871.
Griffith's outdoor activities were mainly nautical. He swam at the Bay, fished and sailed. The periods of relaxation on the Brisbane River and in Moreton Bay became more frequent as his responsibilities increased. He also enjoyed walking, both to his office and on holidays outside Brisbane.

The romantic search for his ideal woman continued. Emma had rejected him in England, as had Etta in Brisbane. Ignoring the advice of his friends and his brother, he resumed relationships with Etta. He called on her the day after he returned to Brisbane, and was soon a regular visitor at the Bulgin home. Throughout 1867 his entries are brief: "saw Etta" (or "Ettam vidi" on Sundays, when his entries were in Latin); or "walked home from Baptist church with Bulgins".

Such entries give no clues to his emotions, but it was abundantly clear that he was as involved as ever when Etta moved to Sydney. Samuel was on holiday at Sandgate from 24 December 1867, and came up to Brisbane on the twenty-seventh to see Etta, only to find she was not at home. He returned to Sandgate, and two days later, to his embarrassment, "lost a letter addressed to Miss Bulgin" when out walking with another girl, Polly Warner. He came back to town on 4 January and saw Etta almost every day until she left for Sydney on 11 January. He sent messages to Etta in Sydney through friends, although he knew he had rivals for her affections. In June he went to Sydney, hoping to revive their romance, but it was over.

In July 1869 he visited Maitland, and fell in love with Julia Janet Thomson. Julia, aged twenty-one, was the youngest daughter of James Thomson, a commissioner for crown lands stationed in Maitland. It seems certain that Samuel had met her before, perhaps first in Maitland, before he left in his fifteenth year. One account claims that they met while he was at McIntyre's school, when she was eleven. Apparently he had renewed their acquaintanceship between 1867 and 1868, perhaps in Sydney, for he does not record any visit to Maitland in those years. He went to Maitland on 3 July 1869, and his first call was on the Thomsons. He then "went to Mrs Wilson and spent evening there with Julia". They were constantly together in Maitland: going to church on the fourth, dining the next day before riding on horseback to visit friends. On the same day he went alone to the graves of his two brothers. He spent the evening at the Thomsons with Julia and recorded in his diary: "amore confessi". The next morning, he left for Brisbane.

Samuel was still susceptible to Etta. He went to her home on 21 July and heard "the old songs", but then asked himself (quite untypically in French) "pour le dernier fois?" ("for the last time?") While in Sydney he had had photographs taken of himself. He was always vain about his appearance, and had likenesses of himself taken at every stage of his career. He sent a photograph to Julia in Maitland, a romantic gesture somewhat diminished by the fact that Etta also received a copy, as did Glanville Wills.

Etta finally faded from Samuel's life. She was married on 23 October while Samuel was in Rockhampton. Her farewell to Samuel was a note inscribed, "I must depart from thee". A woman, as so often in Samuel's experience, had the final word, delicately yet ambiguously phrased.

Samuel left for Sydney again on 30 December 1869. He spent six days there, and saw friends, Pilcher and Mein, bought himself clothes, including silk shirts, and had a turkish bath. On 7 January he reached Maitland and
by "a strange coincidence" his first visit was to the Thomsons. He recorded three versions of the next seven days: the one mainly in English reports that he saw Julia each day; the one in Latin revealed more of his emotions; and there were special memoranda in Latin. By the end of the week, Samuel and Julia were engaged, and he spent another celebratory week in Maitland.26

The engagement meant another change in Griffith's relationship with his parents. His mother, despite their differences, knew something of Samuel's private life and was in his confidence sufficiently to know that he intended to propose to Julia. Her letter, written on 3 January 1870 was in a sense a last attempt to win him for her Christian way of life, and to regain his trust in her:

My dear Sam,

Papa is going to ask Ed to send something by you so it gives me the opportunity of saying a word — I only wish it were as easy to me to speak as to write — on some matters — because silence is often sinful.

Before deciding on the one important matter do "ask counsel of God" — and don't fix on one unless she has the fear of God influencing her. You would find out your great mistake when too late for in our heavenward journey we want all the help we can obtain and I am sure a Midas worldly fashionable life would not suit you. Though you do not yet make any profession choose a wife dear Sam who would train your children for Heaven — rather than decide too hastily wait a little longer. You may be sure your wife will soon find a place in my heart — whenever you can introduce her to me. These few lines you can feel are dictated by a mother's love, and so I need make no apology.27

Samuel showed Julia this letter as soon as they were engaged. He realised how much his mother loved him, and wrote to her reassuringly when Julia had accepted him. His father sent "fondest wishes and earnest prayers . . . Give my love to Julia and for a wedding blessing may you have the smile of God resting on you".28

Samuel and Julia wished their marriage to be as soon as possible, so a date in the next law vacation was chosen. Their arrangements had to comply with those of Julia's eldest sister, Maggie [Margaret Stedman], who was engaged to William Dixon. It was decided to have a double wedding in Maitland on 5 July.29

Samuel and his best man, Charles Mein, left Brisbane on 25 June and reached Maitland on the 30th. Although one of Samuel's sisters attended the wedding, his parents did not go south because of the expense (Samuel's tickets for himself and Mein cost £16.10.0). Griffith's brother Edward came from Sydney to attend the wedding, and helped to organise the bachelor's farewell, a pretext for drinking until after midnight. The ceremony was conducted by the Reverend John Dougall in St Stephen's Presbyterian church East Maitland, at 12.30 p.m., followed by what the groom described as a "jolly breakfast". He had arranged for them to spend their honeymoon at the Great Northern Hotel, Newcastle, and had hired a special carriage for the train journey from Maitland. The next day he bought Julia a piano. They went to Sydney on the seventh, where Julia watched Samuel receive his M.A. five days later. By the twenty-second, they were back in Brisbane, ready to move into a small house near his parents' home. His mother was glad the two houses were close together,
for she loved all her children ‘too well’ to be separated from them.  

Samuel and Julia settled rapidly into domesticity in Brisbane. Although Julia was a bad sailor, they decided to visit her relatives in December 1870. The trip proved a nightmare, as revealed by Samuel’s record for Christmas Day: “at sea not knowing where. Terrific southerly gale blowing too strong for table to be set. Very bad in night. Wife very ill”. The ship had to shelter for three days in Port Stephens. Julia, who was pregnant, recovered during the stay with her relations in Maitland, although the heat was so oppressive that Samuel felt “stupid” during his regular pilgrimage to his brothers’ graves. The return voyages to Sydney and Brisbane were mercifully smooth. Their daughter, born on 15 May 1871, was named Mary Eveline. Samuel recorded Julia’s and the baby’s continued good health, and the necessary readjustments. Julia was up to dinner on the twelfth day; the baby went out for the first time on the sixteenth day; he and Julia walked out “for the first time” on the twenty-third day.

Julia was pregnant again before the end of 1871 and this time her mother came north to help her, arriving a month before a son was born on 6 July 1872. Samuel was proud of his son and pleased that he now had another Llewellyn (Llewellyn Arthur Peter Griffith in full) to fulfil romantic Welsh dreams. It was a time of happiness for Samuel. He loved his wife and children, and his domestic base was to give him constant stability. His legal career was flourishing and he had entered parliament.

Politics was always to be second in importance to law for Griffith. He remained primarily a lawyer, spending far more of his life in the courts than in parliament. Yet this is not to undervalue his success as a politician, nor the satisfaction that he gained from his considerable achievements. Further, there was often a close correlation between his two careers. He was to be the legal minister (attorney-general) in several cabinets, accomplishing legal reforms by parliamentary statutes. His ministries were dominated by fellow lawyers; his debating style was an extension of his advocacy in court; and his approach to political problems was essentially that of a lawyer. His ambitions for a political career may, however, have preceded his interest in law, as his youthful journalism suggests.

Griffith’s very success at the bar facilitated his political ambitions. Brisbane, and indeed Queensland, was sparsely populated, and outstanding achievements in any field were rapidly publicised. His name was probably known to most members of parliament, voting rights were restricted to property owners, and no electorate exceeded fifteen hundred voters, while the smallest numbered fewer than a hundred. Moreover, Griffith was articled to a lawyer-politician, Macalister, and was appearing in courts of law with others, of whom Lilley was to be the most significant in his career.

He first recorded references to himself as a potential parliamentary candidate on 27 April 1870: “Rumours that I was to be Attorney-General but not having a seat in Assembly not asked”. This coincided with a political crisis: Lilley’s ministry had been defeated the previous day by seventeen to six on a vote of no confidence.

On 27 July 1870 he recorded that “Low and Hegarty asked me to stand for Western Downs. Consd. it carefully and determined to decline”. No further identification of either man is given, but this may have been an
invitation from Griffith’s future opponents. “Low” may have been Jacob Low, a squatter, who was to win the seat of Balonne and to oppose the Macalister ministry. Political allegiances were determined more by personality than interests, with the split between the squatters and the Brisbane liberals only beginning to emerge.34

Griffith was a prominent member of the Reform League. Since he drew up the constitution of this early extra-parliamentary organisation, it seems likely that he accepted its aims of “destroying the political powers of the squatters in Queensland”.35 On 19 April 1871 he recorded another invitation to nomination, and this also he declined.36 In the elections, he attended the nomination of William Hemmant and the meetings of Pring and Hemmant, going with Julia to the declaration of the poll.

Later in 1871, he went to the nominations for East Moreton, saw Frederick Forbes elected Speaker, listened to the governor’s opening speech, and went to an electoral commission investigating the Warwick seat.37 He was still seeking election.

Griffith went south to Maitland and Sydney on 23 December, leaving Mein as his agent. From 12 January they exchanged telegrams when Griffith was delayed. On the twenty-first, he “stayed at home all day looking for signs of mail”. When he reached Brisbane two days later, he immediately saw Mein, and then recorded “too late to become candidate for Brisbane”.38

While he had been in the south, Lilley had formed a new extra-parliamentary group, the Queensland Defence League, to gain support, especially in Brisbane, against Palmer’s electoral redistribution bill, which would have reduced the number of seats for Brisbane and its suburbs. R. T. Atkin, the member for East Moreton, agreed to resign his seat if Griffith could be persuaded to stand, and on 12 March 1872 Griffith was requisitioned for the seat. It was a powerful requisition from prominent Brisbane citizens led by the retiring member. The leading metropolitan newspapers supported him, represented by the signatures of T. B. Stephens, part-owner of the Brisbane Courier, and of James Cowlishaw, director of the Telegraph newspaper company.39

Griffith’s manifesto began with a plea for reforms in the legal system,40 and his campaign speeches enlarged on this theme, emphasising his opposition to Palmer’s policies, which he described as “class” legislation in favour of the squatters. He advocated European immigration, greater expenditure on public works (including the extension of railways — specifically the completion of the Ipswich-Brisbane line), the setting up of rural boards, and the encouragement of municipal government.

Griffith’s opponent was Robert Cribb, a brother of the sitting member for Ipswich, and also an opponent of the squatters. Cribb attacked Griffith as yet another lawyer seeking to enter parliament. A journalist on the Brisbane Courier extended this criticism, wondering why Lilley was “packing the Assembly with young lawyers”.41

Griffith was returned with 560 votes to his opponent’s 342. He estimated that his personal expenses totalled £120, a sum that could have been a year’s wages for a working man. His first two years (until January 1874) were to be spent in Opposition. He was, however, closely involved with legal reform, as promised in his campaign speeches. He introduced a Tele-
graphic Messages Bill, designed to facilitate the acceptance of evidence on telegraphic messages in court, and an Equity Procedure Bill to simplify the practice of the Supreme Court.*2

He spoke on the 1872 Legal Practitioners Bill, in favour of keeping barristers separate from solicitors. Griffith was an ardent defender of the hierarchical rights of barristers, having appeared for the Board of Examiners in court. In May and November 1871 he had listened to debates in parliament on this proposal. The 1872 bill introduced by an Ipswich solicitor, J. M. Thompson, suggested part-amalgamation, arguing for a continuum whereby solicitors of five years' standing, or those who had passed examinations in classics and mathematics or held a university degree, would be eligible to become barristers. Griffith was one of those successfully opposing Thompson. Griffith argued that any form of amalgamation might lower standards, allowing inferior lawyers to become barristers, although he claimed he had no objection if solicitors were sufficiently educated.

Griffith was to reiterate his criticisms when another attempt was made towards amalgamation in 1874. His belief in meritocracy was reflected in his argument that "so long as one man was better than another", the attempt to "create a Utopia, or Commune, . . . to reduce all to a dead level of mediocrity" was insupportable. He did not believe that amalgamation was the best way of reducing legal fees. He supported reform of procedure, an issue that was being examined by a law reform commission, and reform by codification of laws. He believed that "the advances of civilisation had always been marked by division of labour" and that the alleged reforms would "reverse that natural principle".*3

In 1877, W. H. Walsh advocated amalgamation as a way of overcoming the problem of the scarcity of barristers. He claimed that only eighteen qualified barristers were practising, hardly enough for the judicial needs of a population of two hundred thousand. Griffith again opposed the proposal, arguing that reforms of the 1876 Judicature Act had lowered legal costs, and that the 1874 Supreme Court Act allowed solicitors in certain cases to appear in that court before a single judge (when sitting outside Brisbane). He criticised the solicitors for their "greedy desires and ambitions".*4

A compromise solution to the long-lasting debate was to come in 1881 when a category called "legal practitioner" was created so that those qualified as solicitors could practise as barristers, and vice versa. Premier Thomas McIlwraith's support for this measure was in keeping with his continuing hostility to the prestige of barristers. Griffith maintained his constant opposition, wanting higher educational qualifications for solicitors before they could be equated with barristers. In particular he wanted a non-legal, literary examination.*5

Griffith was unswerving in his beliefs that individuals had differing mental capacities; that education was needed to stimulate those who had higher mental capacities; that a classical and literary education had considerable value for gifted individuals; that legal education provided significant understanding; and that barristers should come from the mentally gifted, classically and legally educated few. These tenets led to the elitist conclusion that he belonged to a caste superior not only to solicitors but also to those who had no classical or legal training.
On 15 September 1871, Griffith appeared for a New South Wales barrister, W. B. Dalley, who asked to be added to the list of barristers in Queensland. Dalley had been invited to Queensland on a special retainer in a case in which Lilley was the plaintiff. Griffith argued that Dalley was entitled to practise, as he had been admitted to the bar in 1856, before the separation of Queensland, and that the real question was whether separation took away the rights to which he had previously been entitled. Lutwyche stated that there was a precedent: in 1861 he had ruled that J. H. Plunkett could be enrolled, since "the Act of Separation was not intended to operate injuriously against the status of any man". The court was aware of Lilley's involvement in the issue and, as he was in court, invited him to express an opinion. He admitted the "great delicacy" of his position, was sure that Dalley would do honour to the bar if allowed to practise in Queensland, but pointed out "as . . . the only leading member of the Bar in Court" that new rules since 1861 required that a barrister, before being admitted, swear that he intended to reside and practise in the colony. Griffith claimed that this new rule did not apply in Dalley's case — presumably because he had been admitted before 1859. Lilley stressed that he was not objecting, but pointed out that the case might be made the ground for other special retainers. Cockle allowed Dalley's admission, but limited the applicability of the case: "it shall be distinctly understood that this case will not extend to any barrister of New South Wales admitted since Separation". This matter was to be recalled in this court twenty-one years later when Lilley was once again "delicately involved" in a legal contretemps.

Griffith believed that only a few men could do the job he was doing. By 1870 he had enough work as a barrister to support himself and a wife. His level of work reflected his acceptability to solicitors, which was based on their confidence that he would closely study the facts of each case, and would apply relevant legal principles. Between August 1870 and April 1872, when he entered parliament, he had appeared in the Supreme Court nineteen times, an average of just under once a month. The acceptance of responsibility to his electors made little difference to his work at the bar. Between May 1872 and August 1874 (when he became attorney-general) he appeared in the Supreme Court twenty-eight times — fractionally over once a month.

The variety of Griffith's cases in the period to April 1872 continued the trends begun in his apprenticeship before July 1870. His cases ranged from property, contracts, bankruptcy, probate, company and practice, to criminal and statutory cases. He was not reported as appearing in any murder trials, the criminal cases involving briefs for escaping after horse-stealing and libel.

Besides appearing in the Supreme Court, Griffith continued to appear in other courts. In the early years of his marriage, he was reluctant to leave Brisbane, and it was not until eighteen months after his wedding that he made a brief visit to Toowoomba (29 January–1 February 1872), during which, according to his diary, he wrote to Julia regularly, although these letters have not survived.

Griffith went to Sydney and Maitland at the end of each year, usually with Julia. Despite the terrifying sea voyage of 1870–71, they again made the return journey in 1871. Julia stayed home with the two children in 1872.
when Samuel went overland to the south. He left Brisbane on Boxing Day by coach at 6 a.m., and then travelled from Ipswich to Warwick by train. Coaches took him by stages to Murrunrundi, stopping overnight at Stanthorpe (where he spent two nights after a wearying six-and-a-half-hour trip) then Tenterfield, Glen Innes, Armidale and Murunrundi. He went on by rail on 3 January, in a goods train that left at 10.15 a.m. and reached Maitland at 5.30 p.m., where he stayed with his mother-in-law for five days before going on to Sydney for a fortnight. He returned by ship, having been away from Brisbane for twenty-nine days.

Two months after the Maitland-Sydney trip, Griffith went north for legal business that kept him away for eighteen days. He appeared in courts in Maryborough, Bundaberg, Gladstone and Rockhampton, being briefed in at least ten cases. He was away for another ten days between 26 July and 5 August, appearing in court at Ipswich and Toowoomba.

The Griffiths were improving their house in Wickham Terrace. (A plan of the house that appears in Samuel's 1872 diary includes measurements of the rooms and windows, presumably as he and Julia were refurbishing.) They employed a gardener, "Fred", and a maid, "Kate". Samuel had always been interested in gardening, but now either could not spare the time or believed that it was beneath his dignity to work outside. He told Julia in 1874:

the rosellas are growing fast but there are only a dozen plants. Fred has sowed some more seed but it does not seem to come up. The pumpkins melons and marrows are growing well and the cucumbers are coming up.

They were house-proud, and Samuel reassured Julia that Kate had put holland covers on the chairs. They contemplated more improvements: "I will remember to see Mr Raff about the dining-room . . . I think I shall have to have a floor put in the stable."  

In October 1873, Julia had taken the two children south to Sydney, possibly after a miscarriage (this was sixteen months after Llewellyn was born), and on 9 November 1873 Samuel sent her a ten-page letter. His aloof, cold exterior concealed a man who cared deeply for his family, and was acutely lonely in their absence.

Samuel had been north in Maryborough when Julia left, so he returned to an empty home:

The house seemed so dismal and empty without my dear wife and the dear little ones. And so it does still . . . While I am writing I feel less lonely but as soon as ever I stop the sense of loneliness and desolation comes over me again. Yesterday evening I went to Mamma's to tea and came home early — she showed me your short note to her . . . I am going to dinner at the Meins today. I dare not face the empty table here . . . Your room looks so dismal and cheerless. When I went to bed last night it seemed so desolate and this morning when I woke it seemed still more wretched. When I am away from home of course I do not expect you to be near me but home without you seems not to be home at all. If I had only one of the children it would be different but as it is I do not care for it at all. I know that as soon as I stop writing I shall be wretched . . . I hope the children are well by this time. I am constantly wishing I could hear their voices. But if I go on like this you will be thinking I do not wish you to stay. On the contrary I hope you will enjoy yourself very much. In the meantime I look forward to the time when I shall be able to come for you unless indeed
Parliament should meet in December. I think however I will be able to come somehow or other . . . I know that you like to know how much you are missed and how necessary you are to my happiness — more than I am to you because you have the children. However I must make the best of it for another 6 weeks. When I am busy perhaps I shall not miss you so much . . . Now my own darling I must conclude for it is time to go to the Meins. How shall I convey my affection best? You know it well enough without any word from me. God bless you and the dear children to whom give kisses from me. Ever your devoted husband.

S. W. Griffith.

This was at the beginning of their longest separation, which lasted for seven weeks.

Early in 1874, he arranged to pay by instalments for a ten-acre property at New Farm. He paid off the debt (a total of £3,383.1.8) by 1875. The house on this site was to be replaced by a grander ‘Merthyr’ built between 1879 and 1880. Julia was pregnant again early in 1874, and the problem of room for three children must have been a factor in their decision to move. Their second daughter, Helen Julia (Nellie), had been born on 20 October 1874.

As well as land and house expenses, and other payments, Griffith lent his brother Edward £100 on 22 September 1873, and his father £135 on 2 December 1873, the last to help maintain the children still at home, including his elder sister Mary, who was still single at the age of twenty-four. Alice, the second sister, had married Henry Oxley after a three-year engagement. Griffith’s first niece was born on 3 November of the same year, a fortnight after the birth of his own third child.

These expenses help to explain why Griffith accepted more work on circuit. He was away three times in 1873. His letters to Julia show that his relaxations included drinking, dancing and experimenting with a seance:

The result of the whole performance to my mind was to leave it as it was before — I have formed no opinion on the subject except that all I saw could be accounted for by natural causes. After this performance I had some oysters — as I did nearly every night — and then went to bed.

In 1874 he was away on three legal journeys: to Toowoomba for two days in January, to Rockhampton for eighteen days in September–October, and north again to Maryborough for ten days in October–November. His letters from Rockhampton describe his typical circuit routine. He stayed at a hotel with the sheriff, fellow barristers Pring and Little, and “a Mr Dowling whom I asked to come to our room, he is a very nice man, a rich squatter from the far west, 900 miles from Brisbane”. Although these squatters were Samuel’s political opponents he saw no contradiction in meeting them socially. He was, however, too fastidious to mix with gold miners. When he was unable to obtain a berth on a steamer, he described the boat as “awfully dirty and swarming with diggers who I believe go into the Saloon and everywhere else. The accommodation, if I could have got it, was something awful”. Instead, he spent the weekend at Archer’s station, presumably the pioneer home at Gracemere.

Griffith’s returns from his legal work had increased: his diary records legal receipts in 1874 of £1619.15.6, an amount that was supplemented after 3 August by his pay as attorney-general (£500 annually). His legal returns in private cases increased with his growing reputation, and in pub-
lic cases he was assured of extra sums, receiving £592.4.6 in 1875 from the government.\footnote{57}

In 1874, Griffith had invested over a thousand pounds in property alone, presumably using savings from his earlier years at the Bar. His signing of promissory notes, however, indicates that he had little ready cash. He was constantly working long hours, and usually he regarded the acceptance of briefs for country matters as a necessary evil to help cover his expenses.

The young lawyer was beginning to specialise. Thirteen of his twenty-eight cases before the Supreme Court between 1872 and 1874 involved property matters, while the others involved contracts, company, probate, libel, practice, evidence, and statutory offences [Butchers, Vagrancy, Impounding and the Pacific Islanders Protection Acts].\footnote{58}

The cases most significant to Griffith's subsequent career were three concerning property and one under the Pacific Islanders Protection Act. He appeared successfully with G. R. Harding for a squatter, G. H. Davenport, in an action seeking the removal of caveats placed on his land dealings by the crown solicitor and the registrar-general. They alleged that Davenport had not fulfilled his statutory obligation to cultivate one-sixth of his land.\footnote{59}

In 1873, Griffith appeared for the captain and owner of a ship accused of kidnapping Pacific Islanders. The \textit{Crishna}, commanded by Captain William Walton, was seized by Captain Moresby of HMS \textit{Basilisk} in January 1873. Moresby had examined the papers of the \textit{Crishna} and, finding no reason why certain Malays and Polynesians were on board, had seized the ship and put a midshipman on board to sail it to Brisbane. Walton's defence, as argued by Griffith and Lilley, was that the Malays and Polynesians, far from being kidnapped, were the crew of a wrecked ship, and that Walton was taking the men from Darnley Island to Sydney, whence they were to be returned to their homes. His contention was that "the usage and custom of nations, and of the sea, required him to assist the crew in such a plight and condition". It was also argued that Walton had no knowledge of the Kidnapping Act. Griffith also appeared for Sydney merchants who claimed part of the cargo of the \textit{Crishna} for advances made to the captain of the \textit{Active}.

The court did not believe the defence, and ordered the sale of the ship and cargo. They also rejected the Sydney merchants' claims for their portion of the cargo. Cockle's judgment concluded that Walton had "knowingly encountered the risk of capture", being aware of the Kidnapping Act. He found no evidence that the native witnesses examined in court had consented to go to Sydney, nor indeed that they knew to what they were assenting. These natives, he considered, came under the Kidnapping Act because they were "labourers employed in fishing". He further stated that the act did not require proof that they had been kidnapped to work in Queensland.

Cockle realised that the case, the first under the act, would create precedents, and he tried to face the problems that would later concern Griffith as a politician, including the admission of evidence from non-Christians.\footnote{60}

Griffith, believing he could keep his legislative and legal actions separate, saw no inconsistency in appearing for a squatter or the captain of a ship accused of kidnapping. He accepted the principles of English law that every man is innocent until proven guilty, and that every man has a right
to be defended. The division was not as apparent to many of Griffith's opponents, whose claims to have detected a moral twist in his makeup echoed the views of the schoolboys who had found him arguing on any side of the question.61

Most of the cases in which he appeared presented no such moral dilemmas, since they could be seen as disputes between equally respectable persons. Others were on the borderline. For instance, Griffith accepted a brief for an appeal by a publican, Patrick Egan, who had been found guilty of using abusive language in a public place with intent to provoke a breach of the peace. In the parlour of his own hotel, Egan maligned a person who was not present, and the abuse was repeated by an employee who had heard it. Griffith's arguments were that the Vagrant Act was never intended to apply to such a case involving hearsay, and that the parlour of a public house was not a public place under the act. The defence argued that Egan had told the employee to repeat the abuse to his employer, which could well have led to a breach of the peace. The court decided in Griffith's favour on his first argument, without deciding on his second.62

Griffith gained inside knowledge of disputes amongst his fellow parliamentarians in a case over the control of the Brisbane Courier. He appeared with Harding for W. H. Walsh, a squatter and MLA for Maryborough who, on behalf of all the shareholders in the Brisbane Newspaper Company Limited, except those who were defendants, proceeded against T.B. Stephens (MLA for South Brisbane) and the other directors, who were represented by Lilley.63 The company, one of limited liability, had been registered in 1868 with capital of £7,200 in twelve shares of £600 each. In 1872 there were seven shareholders of whom one, Stephens, held three shares and the others, one share each. Besides Walsh, these included the premier (Palmer) and Miles.

Griffith, a rising young barrister even before entering parliament in 1872, had been briefed as a junior in leading financial cases, and as his reputation grew, more solicitors sought his services. For example, he was junior to Lilley for the defendant in an action for breach of an agreement to transfer mining shares. The legal result, a nonsuit, is less significant than Griffith's necessary study of the copper boom, and the knowledge he gained of capitalist speculation in mining.64

When he appeared in a sugar case, he learnt much about another of Queensland's leading primary industries. The pioneer sugar planter of Queensland, Louis Hope, had divided his estate of Ormiston into several portions and made agreements with experienced sugar planters to become tenants of these portions. One of these tenants, Victor Noagues, was represented by Pring and Griffith when he sued Hope for damages for failing to honour an agreement to crush his cane.65 Hope allegedly claimed half of the sugar, rather than the one-seventh specified in the agreement.

Griffith, together with Lilley and Harding, appeared in a series of cases for a client who was proceeding against the Australian Mutual Provident Society (AMP), represented by Pring. T. F. Merry claimed £6000 damages from the society, stating that the AMP had offered land for sale at Toowoomba; that he had been given possession and had erected buildings on it for carrying on his business; but that the AMP did not have title to
this land, and that the duly registered proprietor had successfully brought
an action for ejectment against him. Merry obtained a verdict in a lower
court for £85.7.0, whereupon both parties appealed to the Full Court.

Although the indenture contained the words "the Australian Mutual
Provident Society registered as proprietors", it was held these were "words
of reference only" and did not amount to a covenant that the society was
the registered proprietor. Allegations were made of fraudulent actions, par-
ticularly by Grimes, the auctioneer and commission agent who had sold
the land. Grimes had brushed aside queries as to whether the land
belonged to the society: "Bosh, take no notice of what other parties say,
but only of what I tell you". Griffith argued that there was evidence of
fraud, to which Pring's reply was that "proof of concealment by the ven-
dor's agent is not sufficient; there must be proof of a direct personal knowl-
edge and concealment by the principal". This was accepted by Lutwyche,
who thought that if any blame attached to Grimes, it was as consistent with
"rashness and negligence as with fraud"; the secretary of the AMP and its
solicitors could likewise not be found guilty of fraud: "there was, we think,
no evidence, or no sufficient evidence, of the fraud alleged, or of any fraud
at all". Rather, there had been mistakes on both sides: Merry should have
been more careful in checking the title [caveat emptor], and the defendants
could plead that they had not signed the deed they intended [non est fac-
tum], as it could not be registered.

Griffith did not see this case as a condemnation of the Torrens system
of land registration, being of the opinion that the mistake whereby the
registrar-general's office had issued two certificates for the same land
"seems to be unavoidable under any system however perfect . . . the liab-
ility . . . to error is an element which cannot be entirely eliminated".66

Another case heard in the district court gave similar warnings about
providing full details in any sale. Griffith appeared for the plaintiff in an
action for detinue and conversion of fixtures, against Lilley. Neither the
conveyance nor the negotiations had mentioned fixtures. About two
months after the sale, the seller demanded the fixtures and, although it was
agreed that he had installed them, it was held that an American hoist, two
cedar counters and venetian blinds, being fixtures, passed to the purchaser,
and that the seller could recover only non-fixtures (such as tables and wire
blinds).67

The complicated details of each brief that Griffith accepted were only
one of the pressures on his time. He took his parliamentary responsibilities
seriously, and these were increasing as he was being groomed for minis-
terial office. His days were long and filled with concentrated activity,
especially during crises. Thus he wrote on 28 May 1873: "Judgement in the
Crishna. Ship and cargo condemned. Brief in Massey ats Clark. Received
£25.8 from Roberts and Daly. Instructions for answer in Cribb ats Ede.
House met. Vote of want of confidence moved. Home at 10.55".

A strong constitution was required to withstand these constant pres-
sures, and Griffith was not robust. Already in his twenties he was showing
signs of physical weakness, which was to become more serious in his later
years. He was slight, though wiry, weighing 9st.6lbs (60 kg) when nine-
teen, and only a stone (6.4 kg) more at the age of twenty-eight. As a pre-
cautionary measure before his marriage he had insured his life with two
THERE is fortunately in existence a complete set of photographs of Chief Justice the Right Hon. Sir Samuel Griffith, from the age of 12 to the present day, some of which we print here with. There is a marked resemblance between the portrait at 12 and the portrait of to-day. Very early was indicated in the face that remarkable intellect, which has given to Australia the right to claim one of the great lawyers of the world.

Griffith from twelve to forty-two years old. [Reprinted from The Lone Hand, 1 September 1908.]
companies, whose doctors had found him "perfectly sound". Yet before these examinations he had recorded some conditions that were to persist.

The worst of these, and certainly the most uncomfortable, were piles (haemorrhoids). He suffered pain from them in August 1869, and was more seriously troubled later. Podophyllin, the bitter yellow resin from the root of wild mandrake, supposed to cure many afflictions, was used by Samuel as a cure-all. During a more protracted outburst in January 1873 the pain of the piles was "very bad" especially at night. The remedy used by his doctor seems equally distressing: "had eight leeches in evening followed by much haemorrhage". He was still far from well a fortnight later, and partly because of the remedy had to wear bandages for three weeks.

His poor teeth were another source of discomfort and indicated a deterioration of his general health. He also had trouble with his eyes, and began wearing glasses in January 1873. His other recorded illnesses were minor, although in July 1871, he became "very unwell", with severe pains in his back. A worm pill, two podophyllin pills and a mustard plaster did not cure him, and he could not work the next day, which was unusual, for even his worst bout of piles had only kept him from his work for one day, despite all his discomforts. Compulsively, he worked incessantly, regardless of the effect on his health. The result was often weariness, not only after recreation ("played cricket in afternoon. Tired.") but also on normal days: his birthday note in 1872 reads: "27 years old. Very tired". His two careers were placing a severe strain on him.

In parliament, Griffith had continued to oppose the Palmer ministry. The premier's electoral redistribution bill led to the main debate of the May 1872 session. Opposition members claimed that they already represented more electors than their opponents, giving figures of 69,590 to 48,795. A deadlock ensued in parliament with the Opposition refusing supply until the redistribution bill was revised. Griffith was prominent in efforts behind the scenes, urging the two leaders, Palmer and Lilley, to compromise. He argued for representation of population, not of districts, and was largely responsible for having a new electorate of Oxley carved out of his seat of East Moreton, which had become the largest in the colony. The bill was eventually passed, increasing the House from thirty-two to forty-two members.

Overall, Griffith's parliamentary duties had not distracted him unduly from his legal career. Parliament sat on only fifty-eight days in 1872 (from May to September). He spoke over forty times in this first session. In 1873, parliament sat for only twenty-four days.

Elections were due again under the quinquennial system in November 1873, and close fights were anticipated in most seats. It was a mark of Griffith's success that he was unopposed in the new seat of Oxley. He records that he expended twenty-five pounds on this unopposed election.

Palmer was defeated when the House sat in January 1874, and Macalister formed a government. Lilley, the erstwhile leader, retired from parliament on 16 February, becoming a judge of the Queensland Supreme Court.

In forming his government, Macalister considered appointing Griffith to a ministerial position, which moved Griffith to write an unusually long entry in his diary on 8 January 1874:
Macalister called me and inquired if I expected to be offered the office of A.G. [Attorney-General] to which I replied that I expected nothing. He said that he had consulted Lilley and others and altho’ he wd. have much preferred me as A.G. Lilley had said I must not be taken from my junior practice to lead the Bar as it would seriously injure me while MacDevitt [a barrister-politician who was his rival for the Attorney-Generalship] had no practice and wd. not hurt him.

I said “surely that is my business, not Lilley’s”, and added that if Lilley hated one man more than myself it was Macalister. I then heard from M. [Macalister] that Lilley did not wish Mcllwraith to be asked to join the government but preferred MacDevitt of whom he knew nothing. I advised to get Mcllwraith. At this time no one but MacDevitt and Hemmant had been asked.  

Griffith’s advice was ignored insofar as MacDevitt was appointed attorney-general, but his arguments in favour of Mcllwraith were given weight, and he was also included in Macalister’s six-man ministry as secretary for public works and mines. Hemmant, whose advice had been sought, was made treasurer. The other office-bearers were T. B. Stephens and G. Thorn. The intense political and party rivalries of Griffith and Mcllwraith in the 1880s lay in the future.

Griffith criticised MacDevitt’s performance as attorney-general at every possible opportunity. In the courts on several occasions, he belittled MacDevitt’s grasp of Queensland law. In the House, he took every possible point against the minister’s drafting of statutes, and assertions on legal questions. To stress his superiority, he took great pains in drafting and piloting through the House an insolvency bill. He made MacDevitt’s life “not worth living”, and gave him little opportunity to learn from experience. Griffith’s conduct resulted in the discrediting of MacDevitt and his early retirement in August 1874. On 3 August Griffith baldly recorded the outcome: “accepted office as Attorney General in Macalister Ministry . . . sworn in in afternoon”. His choice of verb on the next day was more revealing: “took possession of A.G.’s office”.

Griffith was unopposed when he stood for Oxley, an election made necessary by his accepting office. Addressing a “numerously attended meeting” at Benn’s Hotel, Oxley, on Tuesday 11 August, he assured his listeners that the new government intended “to open the lands of the colony for settlement as rapidly as possible, and to remove from unlawful occupation all those lands which had been acquired by fraud”. One of his strongest reasons for acceptance of the attorney-generalship was to determine what was and what was not dummied land. On the subject of education, he explained that he had brought forward a measure to abolish subsidies for non-vested schools because he believed that this issue needed to be settled before free, secular and compulsory education could be contemplated “even up to the length of a university”. Griffith’s ascent to ministerial office had shown that he was prepared to push back any rivals. His next victim was Mcllwraith. Griffith had interviewed Mcllwraith as minister for public works on behalf of one of his constituents. He publicised the differences between himself and Mcllwraith in his Oxley electoral address when he claimed to have great confidence in all but one of the ministry. On 24 October Mcllwraith resigned “after a quarrel with Macalister”. For the next sixteen years, the names Griffith and Mcllwraith were to represent the opposing poles of Queensland politics.
The new attorney-general was also uneasy with the leadership of Macalister, whom he had criticised in his Charley Chalk articles for indecisiveness, and he was even more critical of Thorn. Griffith, who regarded himself as intellectually superior to all his colleagues, was already seeking the leadership, negotiating with members on both sides, including C. H. Buzacott and C. J. Graham, a grazier and newspaper proprietor, member for Clermont since 1872.

Buzacott, at this time a close friend and admirer of Graham, recorded his hopes of seeing a middle party led by Griffith and supported by Graham with other moderates. He found, however, that Griffith would allow no
man to express an independent opinion, but required undeviating support:

He had, as a young man, far too much reliance on his own infallibility to seek good advice, or to recognise it when offered. He was more convinced of Griffith's value than was Buzacott. For six months, Graham had been Palmer’s secretary for lands, and when McIlwraith resigned, it was Griffith — not Macalister — who telegraphed Graham to offer him the vacated office of public works and mines. Graham replied that he could not take office for three months, and that he would require more understanding of the land proposals of the ministry. His reply to Griffith referred to “your Ministry”, and ended with a hope that he would be able to serve in a ministry with Griffith in the future.

On 25 June 1875, Macalister collapsed with what Griffith described as an “epileptic fit” and others called “apoplectic”, but which in any case was the culmination of a long period of ill health since 1867. Macalister went to the United Kingdom later in the year, and by February 1876 it was rumoured he would resign as leader and accept the office of agent-general.

Macalister resigned on 2 June 1876, causing bitter debates about his successor until George Thorn was able to form a ministry. Macalister had recommended Hemmant, who wished to stand aside for Griffith, but Governor Cairns refused. The apparent unity displayed at a banquet to welcome Macalister home had hidden deep divisions. Griffith's diary merely records the bare facts: on Thursday 1 June the party had held a caucus meeting; on Friday Macalister had resigned, the governor had sent for Thorn, whom Griffith consulted; on Saturday “Saw Thorn and Dickson and Douglas about new Government” and went to town in evening to see “Thorn and Dickson”; on Sunday “went to town and saw Thorn, Douglas and Dickson at the Post Office”. He then went to church where the minister, probably his father, had selected as the text for his sermon: “Saul . . . thou mightest receive thy sight and be filled with the Holy Ghost”. Griffith continued his Sunday political activities after church: “saw Thorn and others with Stewart again. Government formed. Walked to town in afternoon and saw Macalister. Stewart came to tea”. On Monday 5 June, the new Thorn ministry was sworn in at Government House. Griffith accepted office as attorney-general, and as secretary for public instruction. The experienced J. Douglas was secretary for public lands.

J. R. Dickson, who became Thorn's colonial treasurer, was relatively inexperienced having held office for only the last month of Macalister's ministry. He was reputedly friendly with Griffith. The other two Thorn ministers were newcomers to office: R. M. Stewart, a merchant and manufacturer who had been elected for Brisbane in 1873 became colonial secretary; and Mein, Griffith's close friend, joined the cabinet a month later (8 July) as postmaster-general.

Mein had only recently been appointed to the Legislative Council (on 19 May 1876), an event that supports the theory of a “cabinet intrigue”, for Macalister's ministers had decided that Griffith should lead a cabinet of his allies. This theory is supported by Macalister's earlier reshuffle of portfolios: for instance, on 10 May 1876 Dickson, Griffith's friend, had joined the cabinet at the expense of H. E. King.

The government faced difficulties throughout the session: it had a very
small majority, and survived a vote of no-confidence on 19 July by only twenty-one to eighteen. It had faced another crisis when Walsh resigned as Speaker, complaining that he could not "secure for the Chair that proper amount of respect which its occupant should always command".  

There was much intrigue early in 1877. On 1 March, before an Executive Council meeting, Griffith went with a deputation to Thorn, and "saw Douglas as to Premiership". On 2 March, after a cabinet meeting, Griffith "went to Government House with Douglas and remd. [remained] for nearly 2 hours discussing the political situation". The problem was whether a new premier could be appointed without having an election. A day later, Griffith "got authorities for Govr. and took them to him". [The "authorities" were precedents for not holding an election.] After another cabinet meeting, he went "to G. H. [Government House] on H.E.'s [His Excellency's] invitation who agreed with my views as to the constitutional position. Saw Douglas Thorn and Mein". Griffith then drafted Thorn's letter of resignation (which was dated 6 March) and sent it to Governor Cairns, who accepted the resignation on 7 March — and sent for Douglas to form a ministry.

Griffith's disappointment is shown by his diary entries: "Douglas sent for by the Govr. I required till tomorrow to consider whether I would join him"; on 8 March "Met Douglas — other members of Ministry. Protested against being degraded again to second place but was compelled to join Douglas". The "compulsion" could only have been pressure from Cairns or from a majority of the ministers preferring Douglas. Douglas was appointed the day after his forty-ninth birthday, when Griffith was in his thirty-second year.

Although Douglas had longer experience in politics than Griffith few would have regarded him as of superior intellect or capabilities. Indeed, the younger man had lost support — because others distrusted his sense of superiority and his clear ambition to lead. His frank criticisms of Thorn were notorious, and he had been politically unwise in disagreeing so strongly with Cairns. It seems likely that the cabinet may have been unable to decide on a successor to Thorn. Presumably Mein loyaly supported Griffith, and most probably Thorn advocated Douglas. Stewart's resignation as colonial secretary after serving only a week under Douglas strongly suggests that he had supported Griffith; no evidence exists as to Dickson's position. Cairns' awareness on 7 March of the division in cabinet made him the final arbiter.

Stewart's resignation strengthened Douglas's position, for his replacement was William Miles, a fellow Scot and a fellow squatter. Griffith regained ground when Thorn eventually resigned, for Thorn's replacement was J. F. Garrick, Griffith's friend and a fellow barrister. No more changes were made until a major cabinet crisis in September 1878.

Griffith was disappointed at the outset by this ministry, and he was not reassured by its operation under Douglas. The ministry survived for almost two years, to 21 January 1879, but it was never a strong government. It presented a united front in the House in the session from 24 April to 10 September, and it was also united in its dealing with the new governor, Sir Arthur Kennedy. The most contentious issue was the Chinese Immigration Bill. Kennedy, who had come from the governorship of Hong Kong,
employed a Chinese footman; "obviously no recommendation" to him in Queensland.

Buzacott became a leader writer for the *Queenslander* and the Brisbane *Courier* in 1878, and both papers continually criticised Griffith:

It took a clever youth to draft that bill, but then Griffith might be a very clever youth by nature for aught I know, only that in this Extradition Bill I am informed he "laid so many books upon his head that his brains could not move".

While the Legal Practitioner's Bill was being debated the *Queenslander* wrote:

really Griffith is like the late Lord Eldon — another legal luminary — who was so doubtful as to what was the best course to pursue, that finding two chairs side by side he was undecided, sat on neither, and so came to grief between the two, in verification of the old adage. Griffith's main ministerial work was as attorney-general, where his efforts seemed unimpaired by having to work under three different premiers in thirty-one months; he also continued the educational portfolio he had begun under Thorn in June 1876. After the cabinet crisis in September 1878, when Governor Kennedy refused to give an undertaking to send for Griffith if Douglas resigned, Douglas remained in office and Griffith was given a third portfolio, public works, following Miles's resignation. Miles wrote to the press complaining that he had been dismissed after he had declined to be transferred to the lands ministry. Obviously, Griffith was deeply involved in the whole affair, having visited Miles on his Dalby property just before the changes.

Douglas interviewed the governor, and received his definite refusal to accept Griffith as leader. Griffith baldly records what must have been another bitter setback: "Governor refused to accede to our proposition. At Cabinet nearly all morning. Sworn in as Sec. for Public Works vice Miles, retaining other offices". He spent the next day, Sunday 22 September, considering his position, and on Monday "went to Cabinet. Offered resignation which was not accepted". This refusal is not surprising; assuming that Mein and Garrick remained loyal to him, they may have persuaded him to wait for another opportunity to supplant Douglas.

Douglas's first wife had been killed in 1876, and he had married his ex-servant Sarah Hickey at a Roman Catholic ceremony in 1877. The Colonial Office was aware of her "unsuitability", Bramston commenting on 9 June 1879, "I see that Mr Douglas is mentioned [as a possible president of the Legislative Council] . . . but his appointment would for social reasons have been a serious mistake".

In the elections of November 1878, Douglas's supporters were defeated, and McIlwraith won a vote of no-confidence by thirty-two to twenty on 16 January 1879. The elections had been bizarre, insofar as the dissension within the Liberal party was widely known and, although Douglas remained as nominal leader, others recognised Griffith as the true leader of the party. Thus the Brisbane *Telegraph* reported on 26 September 1878 that: "there can be no disproving the proposition that the Attorney-General will be the leader of the Liberal Party in the immediate future . . . it appears to us desirable that he should lead". Griffith changed his electorate to the more central two-man North Brisbane electorate, where his new opponent was Palmer. In his campaign, Griffith made claims for the whole
party, in effect acting as a leader. Speaking in Rockhampton at a mayoral dinner held for him on 14 October 1878 Griffith, claiming "half the Cabinet in himself", sought to change his image: "he desired to be regarded not merely as a lawyer, but as a colonist who took a deep interest in the welfare of the country. He was, he might consider, one of the oldest inhabitants of the colony". 32 In his farewell address to his Oxley electors he explained his decision to move to North Brisbane in terms of the differences between opposing sides in parliament and "duty, under the present circumstances, to go where the struggle is likely to be hottest". 33

To a packed Town Hall on Tuesday 29 October, he emphasised the existence of two parties: his opponents representing the wealthy, prosperous minority, and his fellow Liberals the majority popular party. Griffith argued in favour of electoral redistribution to increase city seats at the expense of country seats, as well as for further land reform. He opposed the use of Kanaka labour, in order to limit the influence of the sugar planters. A man painted black was used in the campaign to suggest the dangers of Palmer's black labour views, which were lampooned in the slogan: "vote for Massa Palmer and Blackman". 34

Griffith polled 827 votes in his electorate, but his fellow Liberal, Hockings, polled 541 votes, trailing both Palmer with 730 and Pring with 576. It had been a close contest.

The last ministerial picnic to Moreton Bay was in the Kate on 20 December. With the opening of parliament on 14 January and the expected vote of no-confidence two days later, the Ministry resigned on the seventeenth. The House sat only briefly, and was prorogued until May.

Soon after parliament opened on 13 May, Griffith announced that he was officially leader of the Opposition. 35 He also led the extra-parliamentary wing of the party, the Queensland Liberal Association, which held its preliminary meeting on 6 June and elected Griffith president on 13 June. 36 McIlwraith recognised that the Liberals would be much stronger under Griffith, and used the resignation of Chief Justice Cockle on 17 June to try and entice Griffith away from politics. He offered Griffith a judgeship of the Supreme Court. Griffith was tempted, but after consulting with Lutwyche, refused the offer. 37

Griffith's leadership was challenged in August 1879 during the parliamentary session. Douglas, confined to bed, scribbled a note to him:

I observe that you say something about resigning leadership of opposition. Don't do anything of the kind — let things be — the victory gained by the government has its compensations for us — dissatisfaction will set in before long and the disintegration of our side will contribute more to this than integration — what they require in order to exist is insistence — let us cease to insist and you will see what will follow. Meanwhile don't do anything rash. 38

The debate on 26 August had been on a McIlwraithian suggestion to provide free sea passages once a year for members travelling to north Queensland, to which Griffith had moved an amendment that all expenses of political journeys be defrayed. This was defeated by a vote of twenty-five to sixteen. It was a curious vote, with Griffith gaining the support of eight McIlwraith country members, but losing the votes of nine of his usual followers, including Douglas and Thorn. A meeting of the party held on 27 August 1879 reaffirmed Griffith's leadership of the Liberal party. 39 It was not challenged again in the thirteen years he remained in politics.
Recognition

He carried on a brilliant fight as leader of the Opposition

Buzacott

Becoming attorney-general on 3 August 1874 had meant a certain concentration of Griffith’s legal activities, though certainly not a diminution of his overall work, especially as he continued to accept private briefs. His growing success at the bar had engendered more briefs in the Supreme and other courts. He continued to take an active interest in the School of Arts, intellectual societies, and masonic orders. The “rising young barrister” was consciously climbing above his juniors and the other branches of the legal profession. He was to take silk in May 1876, and as a Queen’s Counsel became entitled to receive more returns from his briefs.

The character of the cases in which he appeared for the Crown as attorney-general had altered. The bulk of his work consisted of insolvency cases (representing the official liquidator), followed by property cases (in which he usually presented the Crown’s viewpoint against aggrieved occupiers) and a group of practice cases (some defining the limits of the powers of his, and cognate, offices). The other cases included probate (sometimes representing the curator of intestate estates), criminal, matrimonial causes, contract, company, mercantile, salvage, and the Masters and Servants Act.

As attorney-general, Griffith’s task was to present the best possible legal case for the Crown, and usually he appeared for public servants rather than solicitors. Thus in insolvency cases he had to rely on the affidavits of the official liquidator. He appeared in one such case dealing with the Normanby Copper Mining Company, to settle the list of contributors for the winding up of the company, and he subsequently appeared again for the official liquidator, who required an adjustment of the debts due to this company. Griffith appeared to settle the list of contributors in the winding-up of another copper company, the Mount Clara Copper Mining Company Limited, which had some of the same directors as the Normanby Company.

One property case involved the rights of a selector under the 1868 act. A Darling Downs selector, C. B. Fisher, proceeded against a nominal Crown defendant. Harding and Cooper represented Fisher, who claimed that, having fulfilled all the prescribed conditions, he should be given a grant for a fee simple of the lands selected. The Crown’s argument, as put
by Blake and Beor, was that he had not fulfilled the residence requirements and that the governor-in-council had the right of reviewing all the facts before making a grant. The chief justice found for the Crown, and Fisher appealed.

Strangely Griffith, although attorney-general, appeared with the trial barristers (Harding and Cooper) for Fisher against Blake and Garrick for the Crown. A possible link is through Davenport, for whom Griffith had appeared in earlier land cases. Although Fisher in his affidavit described himself as "of Talgai and of Headington Hill, Darling Downs", a lands officer denied that Fisher had ever lived on the Downs and asserted that Talgai was occupied by another family, and that Headington Hill had been built and occupied by Davenport in 1868-69. The Full Court of three judges — Lutwyche, Lilley and Cockle — rejected the appeal. The main ground was on the meaning of "residence": Lutwyche claimed that it involved more than simply spending some "time on the soil of Queensland". Rather it meant to

be a settler in Queensland ... be here for the purpose of dwelling here, of making Queensland his principal place of abode — I do not say permanent or constant place of abode — and employing the lands either personally or by his bailiff for pastoral or agricultural purposes.

Fisher appealed further to the Privy Council, which upheld the decision of the Queensland court. On the central point, the judgment strongly supported the decision:

no one can reasonably doubt that ... [residence] implies something different from the transient presence in the colony of the applicant for land, and that it imports that the applicant is dwelling in Queensland, having made it, for the time being, at least, his home.

In 1878 Griffith, as attorney-general, proceeded as plaintiff against George Simpson, alleging a partnership to try to defeat the purposes of the 1868 Crown Lands Act by "dummying". Simpson and two others each decided to apply for as much land as they were entitled to under the act, and to induce others to make similar applications. All the land was to form one estate, even if not coterminous and contiguous; whereby a large quantity of land not taken up was rendered inaccessible to any farmers other than the claimants or their associates. In all there were thirteen applications amounting to 32,000 acres. Four of the applicants were in the employment of Simpson; another was related to him. The residence conditions were falsely claimed to have been met. In the words of the information:

the several lessees ... had by themselves or their agents or their bailiffs resided on the said lands for a period of two years; whereas, in fact, the persons who had so resided were the servants of the said firm of Simpson and Co.

On Griffith's advice, the Crown had declared on 11 November 1874 ten of the leases forfeited, but the defendants refused to give up possession of the lands. The information required a declaration that the lands had been acquired in violation of the 1868 Act; that there had been fraud in fulfilling the conditions; that the lands should revert to the Crown; and that the leases should be cancelled. The immediate suit was to compel Simpson to give further answers to the questions put by the Crown. He pleaded that
he was not so obliged because "all such allegations . . . would be, if true, links in the claim of proof" against him, leading to "pains, penalties and forfeitures".

Griffith and his associated barristers argued on various grounds that Simpson was bound to make some answers. Their grounds included claims that the inability of a fraudulent applicant to acquire land was not in the nature of a penalty or forfeiture; that a selector under the 1868 act was bound to answer certain questions; and that the suit was to recover land, not penalise Simpson. Harding and Pope Cooper submitted for Simpson that if the relief asked for were granted, he would be liable under the statute for misdemeanour, so the discovery asked for could not be enforced.

Lilley agreed with this defence. He ruled that the attorney-general was "not entitled to any further or better answer", and rejected all the exceptions put forward by Griffith, arguing that

where the matter would subject him to a criminal prosecution, a man cannot contract to waive the right he has to protect himself from a criminal prosecution. Otherwise, where is the limit? Suppose the matter would tend to show him guilty of murder, would he be bound to answer? An extreme case tests the validity of the supposed rule.

As attorney-general, Griffith had to seek alternative ways to gain evidence against alleged dummying.

Dummying was judicially noticed in a case concerning land on the Darling Downs, adjacent to Canning Downs, near Warwick. Two partners, Frederick Wildash and Kenneth Hutchison, owned Canning Downs. In 1873, George Hutchison, a relation of Kenneth, was granted a conditional lease on the adjacent block. He paid the deposit from his own money, but the rents were paid by the partnership, which also funded improvements. The block was used as an extension of Canning Downs until the partnership sold it in June 1875. In 1876, George was granted a certificate stating that he had complied with the conditions of purchase, and was given a crown grant.

The partners were declared insolvent on 18 September 1876. Three months later, George Hutchison transferred the land to his brother Alexander, Frederick Wildash acting as solicitor. No consideration passed, and it was alleged that the transfer was to prevent the creditors of the partnership from having the benefit of this land.

The official trustee, represented in this case by Harding (not Griffith), lodged a caveat in June 1877 forbidding registration of any dealings with the land. It was claimed that Alexander was a trustee for two-thirds of the land. After the caveat had been lodged, a bank had made advances to Alexander on the security of the certificate of title of the land. Griffith, as attorney-general, appeared with Pring and Garrick for the bank, claiming that as the alleged trust was in violation of the 1868 Crown Lands Act, it was illegal and incapable of being admitted or enforced in a court of law. Although Harding's appeal for the official trustee was delayed beyond the time permitted by the court rules, it was allowed, on stringent terms, because the case was "one of first impression arising on an important colonial statute and depending upon a point of very great nicety and very great importance".
The court agreed on hearing the appeal that the 1868 land act forbade agreements circumventing the purposes of the act, but there was no evidence in this case to show such an agreement, hence no trust was enforceable against anyone taking under George or Alexander. Lilley's remarks on the intention of the act were as important as the actual result, which had uncovered another loophole in the system. His *obiter dicta* declared that to those who are acquainted with the history and policy of this piece of land legislation, there can be no doubt as to the meaning of this prohibition ... it is an absolute prohibition ... every line and word is aimed against secret titles in the land. The object is to secure that the selector shall not be the real owner of the land until he had fulfilled the conditions ... The object of the section is to prevent what is known as ... dummying ... to prevent one man selecting two, three, four or fifty selections by means of his servants or agents, and of performing the conditions imposed by the statute through them, and then of taking to himself the whole of the selection. The intention is to effect settlement upon the land, to create permanent settlement, and to distribute the land among the settlers in certain proportions fixed by the statute: it is not to deprive the colony of the benefit of three, five, fifty or one hundred settlers and give it over to only one."

This legal decision meant another considerable blow to Griffith's ministerial attempts to check dummying.

Attorney-General Griffith appeared for the Crown in seeking the conviction of Jimmy, an Aboriginal, for piracy. Jimmy was accused of boarding a boat anchored in Challenger Bay on Palm Island, about three leagues from the coast of the colony, and of assaulting and wounding the master and a crew member with the intention of stealing the vessel and its cargo. At his trial in Townsville, Jimmy was found guilty and sentenced to death, but the judge reserved the question as to whether the ship was in a location where the crime for piracy could be committed.

The court accepted Blake's defence of the prisoner, holding that the crime "was committed within the territorial jurisdiction of the colony, and therefore subject to the municipal law ... and that no act of piracy could be there committed". Queensland had annexed islands within sixty miles of the coast, and Jimmy's action had been within a line drawn from headland to headland of a bay on an island within this limit.9

Griffith successfully appeared with V. Power for the commissioner for railways, who was sued for damages arising from his negligence in carrying bulls by train from Oxley to Ipswich. The case, as presented for the complainant by Blake and Beor, rested on the distinction between gross and ordinary negligence. The contract of carriage made the commissioner liable only for gross and wilful default of his servants or agents. Griffith argued that there were levels of negligence, and that there was not sufficient evidence for the jury to find gross negligence. The judgments accepted his position. Lilley's review of the law argued that gross negligence had to be found by the jury and that it involved the "absence or omission" of the exercise of "the ordinary care of a competent person".10

The private briefs undertaken by Griffith while attorney-general were varied, including the defence in an assault case,11 and attempts to prevent the sale of the assets of an insolvent company.12 His hopes to do even more private work were limited by the court, after a divorce case in which he
appeared on 24 November 1874. Cockle called his attention to section 22 of the Matrimonial Causes Jurisdiction Act which provided that a copy of every divorce petition had to be delivered to the attorney-general, who had the right to oppose the petitioner's obtaining a decree if there were reasonable ground "to believe that the petitioner had been in some manner accessory to or conniving at the adultery" (the only ground for divorce). The chief justice claimed that, as Griffith might have to intervene on behalf of the Crown, he should not appear as an advocate for either party. Griffith argued that, after a full examination of the issues, he had decided that there was no reason in this case for Crown interference; hence he considered that his "duties on behalf of the Crown cease when the cause comes on for trial". He was overruled by the court, with the assertion that additional facts might make Crown intervention necessary. Griffith bowed to the decision, but under protest. An 1875 amendment to the act made it clear that the attorney-general could intervene at any time before the decree was made absolute, so that Griffith could no longer act as a private barrister for any party in a divorce case.¹³

This did not prevent his acting in other cases. Elections in Queensland were often disputed, and in 1875 the Supreme Court had to decide on the validity of a contest in the municipality of Brisbane. Griffith appeared for a protestor against the election of John Heal. The first ground was the absence of the presiding officer for an hour, during which twenty-five votes were recorded. The court held that this was not a defect, as the town clerk had legitimately deputised during this period. They reserved their decision for three days on the other ground, that the returning officer had not signed the ballot papers. Griffith had argued that as the intention of the legislature had not been carried out, the proceedings were invalid. The judges all agreed with him.¹⁴

Unusual cases tended to be entrusted to the best barristers. An example was Griffith and Blake representing sailors who had recovered a box of gold from a wrecked ship, the *Gothenburg*, whose owners were represented by Pring and Harding. The ship had slid onto a coral reef just south of Townsville on 24 February 1875; the gold had been recovered on 15 March. The contention on Griffith's side was that sailors from a derelict ship were entitled to a sum of between one-third and one-half of the agreed value of the gold after deducting expenses. Opposing counsel maintained that the ship was not a derelict, as the owners knew her precise locality on the coast, and that there was no rule in salvage cases requiring that sailors should obtain such a large proportion of the value. On the contrary, the sum awarded was frequently very small. Cockle agreed with Griffith, awarding one-third of the value (£3211 of £9300) to the sailors, whereupon the defendants appealed to the Privy Council. Its judgment denied that a ship’s being derelict required payment of a fixed proportion, arguing that such payment was relevant only if it enhanced "according to the circumstances the merit of the salvage". They maintained the verdict, however, using the maxim that they could not interfere with an award of a lower court unless it was "extravagantly and immoderately large".¹⁵

Besides his appearances in the Brisbane Supreme Court, Griffith continued acting on its country circuits. Usually this was as attorney-general, where he proved a conscientious advocate:
I was in Court all day prosecuting, Pring and Blake who were defending the
Prisoner [a squatter engaged to be married . . .] were awfully sold. They had been
telling him that he was safe to get off and hadn't the least idea what I was going
to do. When I opened the case they saw that all their trouble was in vain and
had to start afresh.\textsuperscript{16}

His legal work took him to Rockhampton in 1874–75 and 1878, Ipswich in
1875–78, Toowoomba in 1875–76 and 1878, and Cooktown in 1877. Since
joining parliament, Griffith had realised the political need to appear outside
the capital. These country trips were always associated with political work
under his portfolios of education and public works. He inspected schools
and bridges, as well as acting in courts. Overall his burden of cases, largely
in Brisbane supplemented by a few in the country, was more than balanced
by his political work.

Another duty of the attorney-general was to review legislation passed
each session, to certify that it was within the powers of the parliament and
not incompatible with other colonial and imperial laws. He was particu­
larly punctilious in his first review, just after his appointment, to offset
MacDevitt's delays.\textsuperscript{17}

Griffith's reports on acts passed were thorough. He was prepared to
debate with the British Colonial Office such diverse issues as Queensland's
jurisdiction over offshore islands\textsuperscript{18} and the legalisation of marriages to the
sister of a deceased wife.\textsuperscript{19} Some acts affected him personally, such as the
amendment to the 1867 Supreme Court Act increasing the number of
judges from two to four — which led to the offer to him of a judgeship\textsuperscript{20}
— and an act raising the salaries of parliamentary ministers, including his
own, from £800 to £1,000 a year.\textsuperscript{21} Other acts involved a review of his own
work: for instance the Insolvency Act, which, he modestly declared had
"considerable variations, both in principle and detail" from previous legis­
lation.\textsuperscript{22} These "variations" included opening country registries and an
insistence on proper keeping of books of account.

As a law reformer, Griffith disliked archaic procedures. In 1875 he sug­
gested revision of the rules and regulations of the Vice-Admiralty Court in
Brisbane, since in the \textit{Crishna} case "if difficulties had not been removed by
the consent of the parties it would have been almost impossible to have
brought the case to a hearing". The rules of 1832 were "unfamiliar to
practitioners who are accustomed to the more modern modes of pro­
cedure"; the forms were extremely prolix, necessitating a large expense for
suitors "without being well adapted to secure the discovery of the truth,
or due administration of justice". He respectfully submitted that the
benefits of the modern procedure of the High Court of the Admiralty
"might with advantage be extended to the Vice Admiralty Courts".\textsuperscript{23}

Another development from the \textit{Crishna} case was the admissibility in
courts of evidence of non-Christians. The Chief Justice had decided under
the British Kidnapping Act of 1872 to admit the evidence of native
witnesses although they were unable to take the Christian oath. A cognate
question was the admissibility of the evidence of Aboriginals. A commis­sion
recommended legislation "to facilitate the admission of the evidence
of aboriginal witnesses in the case of aboriginal offenders and to allow this
evidence in courts of petty sessions".

Griffith drew up a bill proposing an oath without invoking any deity: "I
solemnly promise and declare that the evidence given by me to Court shall be the truth the whole truth and nothing but the truth". His bill, introduced into the assembly in April 1875, passed all stages, but was then rejected by the council. As Griffith saw little likelihood of councillors changing their minds, he suggested that the imperial government extend to Queensland the provisions of the Kidnapping Act, allowing such evidence: "I am and have long been strongly of the opinion that such an alteration in the law of evidence as would enable the testimony of Aboriginal witnesses and other persons incapable of taking an oath . . . is absolutely necessary". He thought the evidence should be admissible only in the higher courts, as "judges of the Supreme and District Courts, both from their professional education and forensic experience, would be more likely to be able to prevent an unintended straining or abuse of the law".

As a careful barrister seeing both sides of the case he presented the following objections to the proposal:

It is however to be borne in mind that many persons familiar with the character of the Aboriginal population assert that no safeguard can be devised to secure their speaking the truth, and that a skilful questioner can always elicit from them such an answer as the witness thinks is desired.

The Colonial Office doubted if imposing British legislation would be politically wise, for "the matter is within the competence of the Colonial Legislature", which would need to assent to the extension of the law. Eventually, in 1876, a Queensland act provided for taking evidence from persons objecting to taking an oath or being incompetent to do so.

Queensland was under close observation from humanitarian groups because of its bad reputation in dealing with Aboriginals and Pacific Islanders. The Aborigines Protection Society complained to the Colonial Office in 1875 about the murder conviction of an Aborigine, Keelah, on the grounds that he "did not understand the proceedings at his trial". As attorney-general, Griffith defended Queensland justice in this case. He had been the prosecutor, and claimed he had "caused the greatest possible (and indeed extraordinary) precautions to be taken to ensure that the accused should fully understand the whole of the proceedings and evidence being communicated to the prisoner by the interpreters". Two interpreters rather than one had been employed as an additional precaution. The prisoner had been defended by MacDevitt, "formerly Attorney-General of the Colony, instructed by an Attorney practising at Maryborough, the expenses of the defence being paid by the Crown". Griffith was satisfied that the prisoner understood what was happening as fully and completely as did the majority of English-speaking persons, and he regretted that criticism had come from a person not present at the trial and without any personal knowledge of the facts.

As attorney-general, and later as premier, Griffith was to become increasingly aware of, and involved in, the problems arising from the presence of Kanakas in Queensland. In April 1875 he reported on proceedings pending against another ship, the Margaret and Jane, seized under the Kidnapping Act for having a Polynesian woman on board. Griffith's investigations suggested that the woman had been perfectly willing to enter into service, and that the master had known he was violating the letter of the law. Although
Griffith agreed that, following the precedent of the *Crishna* decisions, the ship could be condemned, he recommended release of the ship on payment of costs. He doubted, however, whether his position as attorney-general for Queensland entitled him to exercise a discretion, since it was a British act. He therefore urged the governor to advise the imperial government to agree to the milder punishment.  

Griffith's opinion in 1875 was that there was nothing objectionable in employing Polynesians in pearl fisheries so long as their employers complied with previous legislation: the 1868 Queensland act and the 1872 British act. Speaking as attorney-general later that year, he expressed no definite opinion to the governor on the validity of Commodore Goodenough's doubts as to whether labour vessels were large enough for the numbers of islanders carried. Griffith's 1876 report on how to pay wages due to Polynesian labourers in insolvent estates where mortgagors had taken possession of properties was legalistic: the only measures for the recovery of wages were through the Masters and Servants Act, or the law for the recovery of debts. The idea of payments to relatives of deceased labourers was, he thought, a "good one"; but it could only be implemented by applying the Curator of Intestate Estates Act.  

Griffith's opinions as attorney-general were understandably legalistic. He was, however, well aware that the whole question was becoming increasingly contentious politically. The strongest advocates of Polynesian labour were the sugar planters who were employing most of them, but their services were also used by others, including the squatters, the mainstay of Palmer's supporters in parliament. The liberals, under Lilley, Macalister, Thorn and Douglas, were quick to realise political potential in opposing this cheap labour, especially as humanitarians and missionaries were attacking the bases of the system. The slogan "anti-black labour" was increasingly used: the issue was to be perceived as a major ideological difference between the "conservatives" under Mcllwraith and the "liberals" under Griffith. Whether the Queensland liberal politicians, particularly Griffith, were opposed to the traffic from personal conviction is harder to answer.  

Griffith's legal training enabled him to see both sides of the question from the outset. He was opposed to abuses of the free choice of the Kanakas, whether in recruiting or service, but on the other hand he realised that the sugar industry was essential to Queensland, and that it needed cheap labour. On balance, so long as the traffic was controlled by law, he saw no reason to advocate the abolition of this form of labour. His belief in the rule of law convinced him that legislation could be devised to overcome defects and that British law could be applied to Pacific Islanders. During his term as attorney-general, Griffith did not advocate a law to end the traffic. While new regulations introduced in December 1876 aimed at legally protecting the Polynesians, no other action was taken before he left office in January 1879.  

The number of Chinese coming to Queensland was increasing, especially on the goldfields. In 1876, Macalister's government resolved to emulate the southern colonies by passing legislation to check what was seen as a flood of undesirable migrants. A bill was introduced to increase both the price of rice by one penny a pound and the mining and business licences for
Asiatic and African aliens. Governor W. W. Cairns objected to the bill on 12 August 1876, as soon as it was mooted by his ministers:

these shortsighted and unfair proposals . . . were intended to act as a sop to the constituencies generally, but particularly to certain Electorates in the north — where Chinese competition is of course distasteful.

Nevertheless the bill passed both houses by October, and Griffith as attorney-general advised the governor. Griffith argued that increasing the price of rice did not disbar the bill on the grounds that it imposed a differential duty, since it was "dealing with the administration of the internal affairs of the Colony as to which the Colonial Legislature has always claimed and exercised the right to impose such obligations and charges — whether uniform in their incidence or otherwise". He also argued that the bill was not inconsistent with British treaty obligations. The only treaty that might be affected was the 1858 Treaty of Tientsin, and he could find nothing "in it with which the provisions of this Bill are inconsistent". Nor did he consider that the bill contained anything that might prejudice the Queen's prerogative, or the rights or property of British subjects not residing in the Colony, or the trade and shipping of the empire. Therefore he advised that it should not be reserved for the Queen's assent. In support he cited precedents that had not been reserved or subsequently disallowed: Victoria in 1855 and New South Wales in 1861 had imposed a poll tax on Chinese; while Queensland had "long recognised a distinction between different classes of Aliens", for instance the 1861-1867 Aliens Act imposed "many restrictions upon the naturalization of Asiatic and African aliens which are not applicable to European and North American aliens". Griffith saw the new act as a continuance of limitations, rather than a departure involving any fresh principle:

those aliens who are not now allowed to acquire land in the Colony except under severe restrictions, shall not in future be allowed to exhaust the land of all that it contains of value without making a more adequate compensation for the benefits they receive than is required for other inhabitants of the Colony who are encouraged by our existing laws to settle in our territory and who contribute much more largely to its revenue and general prosperity.

When the governor refused his assent, Griffith offered his resignation: "The Attorney-General respectfully submits that his duty as law adviser has now terminated". He went on to object to Cairns's method of communication:

a matter of so much importance as the refusal to assent to a Bill passed by both Houses of Parliament and which is in the opinion of the Crown Law Officers not within the prohibitions of the Royal Instructions should be formally communicated to the Vice President of the Executive Council.

It was not tactful to tell a governor how to act, and whether he realised it or not, Griffith's chances of becoming premier while Cairns was in Queensland had vanished.

Griffith was astute enough to try to gain support. His diary records on 9 October that he "saw colleagues as to Govr. refusal to assent to 'Gold Fields Bill'", and on the same day he went with a deputation to see Cairns. The governor refused either to change his decision or to accept Griffith's resignation. After a cabinet meeting the next day, another memorandum,
signed by Thorn but undoubtedly inspired by Griffith, was sent to the governor. Cairns affirmed his decision to reserve the bill. The Colonial Office debated the question for three months before deciding to disallow the bill. The reply suggested a bill with the object of checking the introduction of females.

A revised bill was prepared, and passed both Houses. Griffith, in recommending to Cairns's successor, Sir Arthur Kennedy, on 14 July 1877 that he should assent to the bill, summarised Cairns's objections to the previous bill: it was extraordinary since it might prejudice the rights of British subjects not residing in Queensland, and was inconsistent with treaty obligations. The new bill partly resolved the first objection by omitting the clause requiring proof by an alien defendant of naturalisation as a British subject, and it partly resolved the second objection by imposing bars on anybody not holding a miner's right, instead of bars applying only to Asiatic and African aliens. This was special pleading, for the bill still imposed increased charges for miners' rights on these aliens. Griffith's justification was the casuistry of the Duke of Newcastle, when secretary of state for the colonies in 1862:

> exceptional legislation designed to exclude from any part of Her Majesty's dominions the subjects of a state at peace with Her Majesty is objectionable in principle, and the recent transactions with the Chinese Government render it very inopportune to adopt such a measure towards Chinese subjects at this moment. Nevertheless Her Majesty's Government cannot shut their eyes to the exceptional nature of Chinese immigration and the vast moral evil which accompanies it. The entire absence of women amongst the immigrants, their addiction to peculiar vices thence arising, their paganism and idolatrous habits must make them, when they bear any considerable proportion to the general population, a misfortune to any Colony situated as are the Australian Colonies.

Griffith admitted that the bill was "from many points of view ... objectionable", but that it was "not beyond the province of a Colonial Legislature", and stressed that "an expression of opinion by the Secretary of State as to the undesirability of contemplated legislation differs materially from a formal disallowance of a Bill passed by a Colonial Legislature". Griffith's personal opinions are, as ever, difficult to discover. He was acutely aware of the difficulties in Queensland, but made no outright condemnation of the Chinese as inferior.

Kennedy, well aware of the background, accepted the casuistry on all sides, and after an exchange of telegrams with Carnarvon, gave the royal assent to the revised bill. Three months earlier, on 16 May, Kennedy had written a confidential despatch urging the encouragement of Chinese immigration into Queensland:

> our incipient and valuable trade to the East is being destroyed to satisfy a foolish clamour got up by a few hard drinking [but not hard working] rowdies.

Griffith was involved in 1878 in the strike over the employment of Chinese at low rates of pay on ships of the Australian Steam Navigation Company. James Munro, a director of the company, admitted in a private letter to Griffith that the company had tried to obtain "European seamen at a reduction on the wages hitherto paid" and, having failed, had hired Asiatic crew for six of their vessels. As a member of cabinet, Griffith supported
the government’s decision on 16 December to withdraw its subsidy, which helped settle the strike by a compromise that favoured the seamen. Within four years, the company ceased to employ Chinese.

Another form of immigration from the Pacific islands which called for Griffith’s legal expertise was the escape of French criminals from New Caledonia to the Queensland coast. He reported in December 1875 on a request from the French consul-general in Sydney for extradition of five escapees. Griffith supported the extradition of one, a convicted murderer, but not the other four, because their crimes — stealing and uttering counterfeit money — were not included in the 1843 extradition treaty between France and Great Britain. The French authorities protested, but Carnarvon upheld Griffith’s advice, ruling that the surrender of convicted persons could not be demanded under the treaty, as they did not fall in the category of “accused” persons. The issue had wider ramifications than these legal loopholes indicated, and Griffith and his counterparts in the other Australian colonies were to become increasingly concerned with the number of escapees, as part of the general problem of France’s presence in the Pacific.

A comparable problem to that of the escapees from New Caledonia was that of absconders from justice escaping from one Australian colony to another. The Brisbane Chamber of Commerce wrote to the Queensland government in November 1874 at the instigation of the Melbourne chamber. Victoria was framing legislation, and Queensland was urged to press for uniform legislation in all colonies. After an intercolonial conference in Sydney in February 1875 agreed that the 1850 New South Wales Act was inadequate, Griffith drew up a bill in March, which he submitted to the colonial secretary in April. It was not passed, and the question was discussed again at an intercolonial conference in Sydney during January and February of 1877. Griffith attended for Queensland, the first of his many representations on behalf of the colony. After this report of 20 April, the Executive Council approved his Fugitive Offenders Bill.

Provisions were made for police magistrates to exercise a jurisdiction similar to that of their counterparts in the United Kingdom. They were to have power to arrest and return offenders to their original colonies, and powers to recover stolen property. Realising the difficulties of “inducing the legislatures of all the Australian Colonies to act in perfect unison in the matter and the limited powers possessed by them for this purpose”, Griffith suggested that an act should be passed by the imperial parliament. The Queensland act was passed in 1877, but suspended until a British order-in-council directed it to have effect within the colony as if it were part of the 1870 British Extradition Act. Griffith supported moves towards intercolonial cooperation, for instance by backing a Tasmanian suggestion in 1877 that an Australian appeal court be set up.

Griffith recommended the reservation of a bill consolidating laws on navigation because Queensland had not accepted minor suggestions made by the British Board of Trade. Eventually no changes were made. He also recommended for reservation a bill altering rules as to the succession to real estate. It was granted the royal assent, following precedents of similar measures in the other Australasian colonies.

Much of Griffith’s work as attorney-general centred on the working and
improvement of the land law of Queensland. Macalister's party wanted the 1868 land act enforced strictly in favour of genuine selectors, so Griffith had to find ways of combating the squatters' use of dummy selectors. He advised the lands minister that strict enforcement of the residency clauses, requiring *bona fide* continuous occupancy for at least six months by the selector or someone employed by him, would prevent such abuses. Whenever the lands minister suspected dummying, Griffith advised the issuing of proclamations declaring that the lands had been applied for fraudulently, and that they were now reopened for genuine selection. Moneys paid should be forfeited on "the general and well-known principle of law, that a man cannot found an action upon his own fraud". Once a selector had committed a breach of conditions it was lawful for the government to enter and proclaim forfeiture, and non-residence for six months had been held by judges (both Lilley in Queensland and A. Stephen in New South Wales) to be sufficient evidence of abandonment.*

Griffith had appeared in several land cases since 1867 as counsel, and his advocacy of political policy as attorney-general was sometimes opposed to his previous arguments. This was most notable in the case of the pastoralist, G. H. Davenport, represented by Griffith in hearings between December 1872 and May 1873. Griffith had then argued against the Crown, claiming that Davenport should not have to forfeit his lease although he had failed to cultivate or improve his land. Davenport had lost his case. In 1874, as attorney-general, Griffith had to represent the Crown against Davenport in an ejectment action. The Privy Council eventually upheld Davenport's appeal.*

The opinions Griffith expressed to land ministers frequently illustrated the clash between his desire to find solutions compatible with his party's political views and his strict legal constructions of statutes. Generally his legal conscience overrode his political convictions.

Educational policy was another of Griffith's major responsibilities. His concern can be related both to his father's involvement in the right of Nonconformists to control their own schools, and to his own recognition of the opportunities that education had opened for him. It was to lead to his appointment on a royal commission investigating the working of the educational institutions of the colony.

By legislation of 1860, the Queensland government had aided local efforts in opening national primary schools and had appointed a board to control them. Another act provided help in opening secondary grammar schools. A third act ended state aid to religion. By 1874, 203 primary schools were teaching 29,012 pupils, and two grammar schools had been opened, at Ipswich in 1863 and Brisbane in 1869.

As in the southern colonies, the debates of the 1860s and 1870s had centred on the relationship between the state, the churches and schools, particularly on the membership of the controlling board and on whether both sectarian and non-sectarian schools should be assisted by the state. Griffith was definitely on the side of secular schools.

Lilley argued that the Queensland board should refuse aid to non-vested schools, especially if they were in violation of the regulation that teachers paid by the board should not be employed to impart religious instruction.

Lilley was chairman of the 1874 Royal Commission on Education, of
which Griffith was one of the members. The other members included two liberal politicians, Douglas and Mein, and Dr Prentice and A. J. Hockings. The headmaster of Brisbane Grammar School acted as secretary. Two members of parliament had refused to sit: Dr O'Doherty [a Roman Catholic], and W. H. Walsh [an Anglican], who criticised the commission as having been appointed to "work out predestined ends". It was undoubtedly a prejudiced commission, since none of its members were clergy. It was not therefore surprising that its findings were in accordance with Lilley's opinions, and that it advocated compulsory education.

The report was submitted in March 1875, and Griffith was active in seeking legislative endorsement of its principles. Earlier in 1874, Griffith had managed to have a bill passed through the Legislative Assembly to eliminate non-vested schools, progressively. This measure had not, however, been returned by the Legislative Council, where it was ordered to be read a second time after six months had elapsed. Griffith had then argued that the state's duty ended after giving rudimentary instruction that enabled the child to become a good member of society. His 1875 bill was passed by both Houses, and became law in January 1876. It created a Department of Public Instruction, and Griffith became the first secretary, a post he held for over four years.

State aid to non-vested schools was to end after 31 December 1880. All children between the ages of six and twelve had to attend schools for at least sixty days in each half year, and no fees were charged for attendance at primary schools, although one-fifth of the cost of new schools was to be raised by public subscription. Secondary grammar schools were also controlled by the state. Griffith continued in his private capacity as a trustee of Brisbane Grammar School.

Griffith was a conscientious minister of education, treating each problem on its merits as if it were another legal case. After accepting the portfolio, he visited educational authorities in New South Wales and Victoria. He used the knowledge thus acquired in drafting the regulations for the Queensland act, which he completed in February and gazetted in April. He enforced these regulations strictly, for instance in confirming the dismissal of primary teachers for falsifying their testimonials, as well as for intemperance or "unbecoming behaviour".

That he was also thorough was confirmed by a northern trip in October 1879 to inspect state schools at Bowen, Charters Towers, Millchester, Comet, Allounstone, Maryborough and North Rockhampton — where he also visited the Roman Catholic girls', infants' and boys' school.

Griffith wanted gifted colonial children to have the same opportunities for tertiary education as he himself had had, and he argued strongly for his bill "to facilitate and encourage Higher Education and to make provision for the Establishment of a University in the Colony of Queensland". It was not, however, approved. Instead, in 1878 he inaugurated a limited scheme providing a few exhibitions to universities within Australia or overseas. Amongst the initial winners in 1878 was T. J. Byrnes, later to become Griffith's political protege as solicitor-general and, briefly, premier of the colony. Griffith also supported the scheme of state scholarships for primary school children to proceed to the grammar schools, begun in 1876. Up to fifty were to be awarded to boys, up to ten to girls.
Griffith was necessarily less involved in his third ministerial post as secretary of public works from 21 September 1878 to 21 January 1879. It was a brief appointment, accepted by default after Miles had left the ministry, and public works were never Griffith's central concern. The Douglas ministry was already discredited and no new projects could be expected to be approved in its last four months.

Nonetheless he was thoroughly conscientious in the post, his diary recording his regular attendance at his new office, where he read the relevant files of the department, as witnessed by his signed minutes. Within a week of accepting the office he went on a northern trip, partly as an electioneering campaign, partly as proof that he was taking his new responsibilities seriously. In Townsville, he consulted with the railway engineer; in Bowen, he visited the works office: back in Townsville, he inspected the harbour works and left in a buggy with Ballard to inspect the Burdekin bridge; in Charters Towers, he visited pyrite works and a mill; in Townsville again, he inspected a site for a telegraph office; further south he "rode on engine from Westwood. Went across Comet bridge", and received a deputation from the Comet progress association; at Allounstone, he inspected bridge works; in Rockhampton, he inspected the Crocodile Creek bridge and the railway workshops; he saw river works at Gladstone; and in Maryborough he received a deputation advocating more expenditure on the Burrum railway and on the extension to the wharves.

On 16 December, after an Executive Council meeting in Toowoomba, Griffith inspected Watts bridge. Then, repeating his Westwood precedent of travelling on the engine, he came down the range with the new attorney-general. On 20 December he inspected sites for a bridge over the Brisbane River at Cash's and Wyllie's Crossings; he was in the Works Office on 23 December, then went north to Gympie, receiving deputations about constructions on 28 December. He was in the Works Office for eleven of the remaining seventeen days before the Douglas ministry resigned.

Griffith was, by any standards, a tremendously busy person in the four years from August 1874 to December 1878. The strains on his health should have been increased, but he records fewer crises, possibly because he was so occupied. He had teeth filled in Sydney in January 1876; the same month he was seasick on the return voyage to Brisbane on a very heavy easterly swell, and he recorded being "very weary" all day 23 November 1876, for which date another entry records the death of the wife of his parliamentary colleague, John Douglas, following a fall from a carriage.

Family ailments may have helped divert his concentration from himself. Julia had eight teeth out in January 1876, and Eveline, his eldest daughter, had scarlet fever in December 1876, so that the family had no guests on Christmas Day. Griffith was home only one day between 6 January and 5 February, which must have made it a very difficult month for Julia. She was nearing full term in her fourth pregnancy and realised that it was almost impossible to keep the other children from contact with Eveline. Predictably, Nellie had scarlet fever by 1 February, and Llewellyn four days later. In the midst of these crises, on 3 February, their second son, Edward Percival Thomson (Percy), was born. Griffith returned home to find "Julia and baby well. Nellie and Llewellyn laid up with scarlet fever".
Griffith remained healthy, recording only a very bad cold in July 1877, and a visit to the dentist in Sydney in January 1878. He was thrown from his horse in the main street of Brisbane, Queen Street, on the morning of 27 March, but he was unhurt [except in his dignity]. He found time to go once to the races at Coopers Plains, see a cricket match between an Australian eleven and a Queensland eighteen, and play lawn tennis, but these were rare relaxations. He bought a cow in 1878, and, carefully conforming to the law, received his own brand "8UG". He attended the opera with Julia for a season of eight performances [in a month] in 1875, and continued to read fiction for relaxation.49

The only recorded disagreement between Julia and her husband dates from the same period, and the incident provides the clearest evidence of the effect of his overcrowded schedule. The whole family went south on Christmas Day 1875. Julia and the children stayed in Maitland from 4 January, while Griffith stayed for only three nights. Griffith’s letters of 4 February and 21 February contained no hint of strain, but on 3 March he wrote:

I have not had a very pleasant time of it lately ... and I could not help being angry with my dear old woman whose innocent carelessness had contributed to cause my unhappiness ... I know that your only wish is to make me happy and yet I cannot help thinking that you might have done otherwise than what you have. For instance I think that you might have as much regard for me now as when you were about to become a bride ... if you are angry with me you must remember that it is only my strong love that makes me so sad and perhaps unkind. I wish I could go to bed at once and dream of you.50

Whatever the cause of this minor paper quarrel — perhaps merely Julia’s decision to stay south longer than she planned — it did not last long. In the same letter, Griffith complained about his sister Mary, who had been keeping house for him. Griffith had asked his mother to replace Mary with Lydia, for ‘Mary is so sensitive that I cannot make any objection to her to what she does, however much it may annoy me but I was getting quite wild at her [innocently intended] annoyances’. Mary left Griffith’s home on 11 March. A spate of telegrams were exchanged with Julia (four in four days from 6 to 10 March) and his wife and children returned to Brisbane on 13 March after a separation of seven weeks.

Usually their house and garden provided a peaceful refuge from his work, and they derived considerable pleasure from planning for the future. They already owned the land at New Farm where they intended to build, and they were preparing its grounds:

the garden is greatly altered in appearance. All the flowers and little shrubs are grown very much so that the beds are quite distinct from the grass and walks and you can see what the arrangement of the plan is like. Macpherson has built a great framework around the pine tree for creepers. It is rather too elaborate but is very good. The balsams verbenas amaranthus and other plants, particularly cockscombs, are very fine indeed and the hedge of lantana is quite thick.

The pond is not full but the banks are beautifully green and soft to walk on. The housepond has been properly paved and built around. Don’t you think a closed fence would look better than an open one?51

Much of this work was set back when a terrible hailstorm on 28 December
1877 destroyed all the plants in the garden, and broke all the glass in their dining and drawing room windows.

The Griffith's social life entailed keeping in regular contact with parents and siblings, particularly the Oxleys, and dining with political and legal acquaintances, some of whom (notably the Meins) were close friends. Griffith still aspired to the top of the social hierarchy, partly to advance his legal and political ambitions, partly to overcome what he believed to be his disadvantages as the son of a Nonconformist minister. Yet social gradations were relatively minor in expanding Brisbane, where occupation and income could count for more than birth or breeding. The Griffiths were assuredly within the Government House circle, well before he became a cabinet minister. He had known every governor from Bowen onwards, and cultivated their acquaintance. When he was in Sydney in January 1875, he called on the New South Wales governor, Sir Hercules Robinson, and went with him to meet Queensland’s new governor, Cairns. Similarly he went out in Moreton Bay to meet Kennedy when he was quarantined, and regularly visited him there. He and Julia were present at Government House balls and had played croquet on its lawn.

Even before Griffith reached cabinet rank, he had been invited to social gatherings in political circles, and these increased as he rose within his party. He went on excursions to Moreton Bay: for instance, on 5 March 1877 a group of prominent citizens farewelled Cairns with a day’s outing in the steamer Elamang; on 6 July 1876 he had a day aboard the Kate on a ministerial picnic which went to Flat Rock. He was out in the Kate several times in 1878: in March he spent three days on the bay with Douglas, Dickson, Mein and Garrick. They spent one night at the bar of the Brisbane River, the next on Stradbroke Island, and then met a Japanese ship, the Tsukuba, and brought its officers ashore. On 13 April he went on a three-day excursion to Peel Island, Dunwich and Amity Point. On 14 June he “entertained the Chief Justice and members of the Profession in the ‘Kate’”. [This was before Cockle left for England on 26 June.] During July, he took the Kate for a two-day fishing trip to the north, anchoring under Bribie Head overnight, and moving to Caloundra Point the next day; in December, with a group of cabinet ministers, he took the Kate out for another two days in the Bay.

While in Sydney, Griffith was gratified to be invited to similar functions, recording a colonial secretary’s harbour picnic in January 1877. He stayed at the Australian Club in Sydney in January 1875, and his explanation to Julia revealed something of his social attitudes:

I found out on board from Mr Morehead that telegrams had been sent [by himself I believe] to both the clubs here to make me an honorary member and as Mr Lloyd was on board and was coming here I determined to come with him. This is the oldest and grandest of the clubs but nearly all the members appear to be strangers. However it will be not more dismal than Petty’s [hotel] would have been.32

On the same visit he met Sir Henry Parkes “at dinner at Mr Alex Campbell’s”.33

Griffith went to Melbourne on political and educational investigations in January 1876, his first visit since passing through on his way to Europe in
1865. He stayed at the Melbourne Club, visited Government House, met most of the leading politicians and legal figures and stayed with the family of one of them, his friends the J. J. Caseys at Portsea. He visited the picture gallery, the university, a pantomime and the library, where he recorded seeing Marcus Clarke.  

Griffith's socialising, only partly explained by his educational and political interests, was one symptom of his desire to attain high status. Other clues to his views come from his church attendance. While in Melbourne, he went with Mein on 9 January to the morning service at St Peter's, the Anglican church at Brighton Beach, a possible indication of his further shift away from his father's church. He had called on the Rev. S. C. Kent, a Congregational minister, in the afternoon, and had tea with him before attending evening service in his church. He went to church only three Sundays in seven.

He continued his work for the schools and university, selecting with Mein a master (R. Roger) for Brisbane Grammar School while in Sydney in January 1876; in November 1878 testing the students sitting for university entrance; and examining an M.A. candidate for Sydney university in June 1876. He had also accepted other tasks, acting as a juror for inventions and workmanship at the Brisbane Exhibition; and presiding at lectures on biblical subjects and such other topics as ballet music. Griffith had been extremely busy, especially between 1874 and 1878. His social activities were minor additions to his heavy legal burdens as attorney-general, his political responsibilities in education and public works, and his administrative duties as acting colonial secretary in November 1877.

As leader of the Opposition between 1879 and 1883, Griffith was conspicuously successful, even his political opponent Buzacott giving fulsome praise:

he carried on a brilliant fight as leader of the Opposition and proved himself a parliamentary leader unsurpassed in Australian history ... it was during this period that Griffith's greater qualities developed and that he rose to a height of efficiency head and shoulders above any other member on his side of the House.  

Much of this fight was against the premier, McIlwraith, and the two leaders were to clash constantly.

The steel rails case, which first came to Griffith's notice when he received a letter from William Hemmant written in London in April 1880, was to occupy a large proportion of his time for almost two years.

On 21 June 1880, Hemmant, who had just returned from London, persuaded Griffith to take up the case. The issue had clear political implications, insofar as Hemmant and Griffith had both been ministers under Macalister, in a government that McIlwraith had left. Macalister was condemned by Hemmant for not resisting McIlwraith when McIlwraith was premier and Macalister his agent-general. Parliament set up a select committee to investigate the allegations. These were that when tenders had been invited for 15,000 tons of steel rails for the Queensland government, not all railmaking firms had been invited to tender; that the tender of Haslam Engineering Company, (of which Ashwell, the consulting engineer for Queensland in England, was a director) had been accepted although
they were not railmakers and were obtaining the rails at £6 a ton and selling them to Queensland at £9.18.6 when the average price was £5; that McIlwraith and others had an interest in these transactions, which "it would be highly advantageous to ascertain"; and that McIlwraith, McEachern and Co. contracted to carry the rails at £1.18.6 per ton, when other firms would have carried the rails for less. There were other charges, too. For instance, Hamilton suggested that a previous arrangement with G. S. Thomasson, representing Ibbotson and Co., for the supply of 42,000 tons of rails in October 1879 (a deal that ultimately fell through), was throughout a make-believe.56

The select committee, consisting of four McIlwraithians — Archer, Perkins, Macrossan and Morehead — and three of the Opposition — Griffith, Dickson and McLean — found by a majority against Hemmant’s allegation.57 Griffith, throughout the parliamentary debates, the select committee, and the subsequent discussion of its report, had taken the leading opposition role. He was attacked both in and out of the House, but continued to demand a full investigation. His long, detailed speeches lasted for up to three hours, as on 10 November.

As the select committee had been so divided, the government agreed to conduct a further inquiry in London. In November it appointed George King, a merchant and pastoralist on the Darling Downs, to act as one of the commissioners in England, the other to be appointed in England. On 8 December Griffith “determined to go to England”, and by the end of the month McIlwraith had also decided to go to London, ostensibly to obtain funds from British capitalists for his land-grant railway schemes, but “the more urgent personal cause of his visit [was] the inquiry into his transactions as to steel rails etc”.58 All three men left about the end of the year, travelling separately.

The Queensland government sent a blank commission to the Colonial Office, asking them to select the other commissioner. Subsequently King, Griffith and McIlwraith agreed it should be a barrister, and on 3 March the task was accepted by F. W. Gibbs, CB, QC, described by the Colonial Office as “a gentleman of high standing upon the Northern Circuit”.59 Griffith’s private comments to his wife were not so flattering: "both of these distinctions [the CB and QC] he received I believe because he was a tutor to the Prince of Wales. He may be a very able man, but has had very little legal experience”.60 Privately the Colonial Office recognized that a commission under the seal of Queensland had no power in England to force attendance. It had become increasingly suspicious of the whole affair.

Griffith’s initial optimism that the briefing by McIlwraith of “about the best counsel in England” would ensure the discovery of the truth led rapidly to disillusionment: “the people called refused to tell all the truth”. He consoled himself that without his presence the whole hearing would have been a farce. He left before the final summing up by McIlwraith’s counsel. He was not surprised when the commission decided in favour of the government:

the Colony has not been shamefully plundered by a ring of speculators in the London office... there was no such ring of speculators... the charge of connivance brought against the Premier is without foundation.61
They agreed with the majority finding of the Queensland select committee that "no one holding shares in any Company contracting with the Government ought to hold the appointment of consulting engineer", but denied any specific evidence that Ashwell had shown favouritism to the Haslam Engineering Company. Ashwell, the engineer implicated, had claimed that certain firms had been eliminated because of the standards set for the rails. Griffith's attempt to make the firms that supplied the rails to Haslam reveal the details of their arrangement with Haslam had been unsuccessful.

On the question of the freight of rails, the evidence had disclosed a combination made some two to three years earlier to avoid "ruinous competition".

the London brokers agreed that while they all tendered, each without knowing the exact rate of tender of the others, McIlwraith, McEachern and Company, should make the lowest tender, and that if their firm, or any other firm, got the contract, it was to be on the joint account of all the parties to the agreement.

In fact the tender of McIlwraith, McEachern and Company was the lowest, and the commissioners found there had been no favouring of the firm of McIlwraith, McEachern.

When Griffith reached Brisbane on 20 June, his party followers met him at the mouth of the river in the Kate for a celebratory lunch before steaming in apparent triumph upstream to the city wharves.


Soon after parliament opened, Griffith introduced a motion condemning the government "as to Steel Rails and Freight Contracts". His speech was a marathon performance, lasting for seven hours and occupying all of the afternoon and evening sessions. The debate in the House, covering by now familiar arguments, lasted until 20 July, when his motion was defeated on party lines by 27 to 20.

The issue was also kept alive in the courts, where four separate hearings between the same parties, Miles and the premier McIlwraith, were closely related to the steel rails case. The legal and political issues had become enmeshed to such an extent as to be inseparable. Yet Montesquieu and others have maintained the fiction of the separation of the legislative from the judicial sphere, and the image of impartial law was defended in Queensland at a time when the leader of the Opposition was the main prosecuting barrister; the premier was the defendant; one judge had been the premier's strongest political opponent, and another had had long political experience.

In September 1880, Miles brought an action, under sections six and seven of the 1867 Constitution Act which forbade contractors with the government sitting or voting, against McIlwraith. Griffith, Garrick and Rutledge — all Liberal politicians — appeared for their political colleague, Miles. Pope Cooper (soon to be McIlwraith's appointee as attorney-general) and Real appeared for McIlwraith. Miles sought to have McIlwraith's seat declared void, and a reward paid to him. Miles claimed that in 1880 a contract or charter party had been entered into between Queensland's
agent-general and Andrew McIlwraith and Donald McEachern for the conveyance of migrants from England to Townsville by the ship *Scottish Hero*, of which Thomas McIlwraith was part-owner. Miles claimed £500 for each of the five sitting days on which McIlwraith voted during the voyage of the ship (6, 7, 8, 13 and 14 July). McIlwraith’s defence was that, rather than authorising, he had expressly forbidden the making of the contract, and that his interest in the ship was only as trustee under a marriage settlement under which he had a very remote interest in expectancy. He also argued that he could not be sued until his election had been declared void by the Legislative Assembly. The preliminary hearing in September was on a demurrer to the defendant’s statement of defence, and Lilley ruled: “it is no defence on behalf of a contractor who presumes to sit or vote to say that he is a member”. Harding agreed, finding in favour of Miles on all points of law raised, as did Pring.64

This case did not reach a hearing for a year, mainly because the principal protagonists were in England appearing before the steel rails’ commissioners. In many ways, the continuation of the Miles case was an anti-climax. The pleadings were amended as a result of the preliminary hearing in 1880 and the action, heard before Judge Harding and a special jury of twelve, began on 22 August 1881. Griffith, who appeared for Miles, lost the case. McIlwraith’s defence was that even if the charter party was made (which he did not admit), it was made without authority from the owners of the ship and contrary to his (McIlwraith’s) express directions. He admitted sitting and voting in the Legislative Assembly on the five days, but said he did so not knowing of the charter party.

The jury was left sixteen questions to answer, and its replies, which exonerated McIlwraith, accepted that the charter party was made contrary to his express directions. It agreed he had known of the charter party on two (13 and 14 July) of the five days, but added a rider, “we do not know whether the defendant knew . . . [its] legal effects”. The exact form of the next question was to become contentious: the jury had been asked “Did the defendant on such days, or any and which of them, presume to sit, and vote, knowing of the said charter party?” Its reply had been, “Yes, as a matter of fact, on the 13th and 14th July 1880; but there is no evidence that he sat and voted presumptuously”. A further question had been posed after the sixteen questions had been answered: “On the 13th and 14th July, 1880, . . . did the defendant know the actual contents of the charter party?” The reply was that the evidence was insufficient, which was enough to sway the balance in favour of McIlwraith.65

Griffith immediately appealed, moving for a *rule nisi* to enter judgment for the plaintiff for £1000 (covering the two days) or alternatively to set aside the judgment and the findings of the jury in answer to four of the questions, and for a new trial on these issues on the ground of direction.

The appeal centred on the word “presume”. Griffith argued that Harding had given the jury too much discretion in directing them that “presume” meant “knowing of and intending the consequences”. He had asked Harding to direct the jury “that the defendant must have had actual knowledge of the charter party, or that he must have had his attention called to it in such a way as to attract the attention of a reasonable man”. The proper
direction would have been: "if the defendant, when he sat and voted, knew of the charter party, or had means of knowing of it, or had his attention called to it, and wilfully shut his eyes, or voted recklessly or defiantly", then he had presumed to sit or vote within the meaning of the statute.

The court rejected the appeal, finding the plaintiff had not proved the defendant's knowledge of the contract at the time he sat and voted. The case was appealed to the Privy Council, and again lost, so overall McIlwraith had won every round.

Yet Griffith had succeeded in raising a dense smokescreen in which the facts were so obscured that few could have had no suspicions of his rival. He was able to raise the slogan of clean government against corruption. If this had been his only aim, he had been successful, for the defeat helped his election prospects.

In the struggle Griffith had, however, gone further, and his actions had been compulsive, those of a man driven to extremes to prove what he accepted as incontrovertible facts, and insofar as he was disappointed three times by the findings of the Queensland inquiry, the London commissioners and the Queensland parliament, he had failed. When the case opened in April 1880, Hemmant had stated that if Hamilton failed to obtain redress, he would have "to re-construct . . . [his] theory of the universe". The defeat was to both Hemmant and Griffith a bitter disappointment and a challenge to their most deeply-held beliefs.

During Griffith's absence overseas he had written regularly to Julia. This series of letters, together with his diary entries and the souvenirs of the journey, indicate the priorities of the successful barrister and politician, now aged thirty-six.

He was uxorious, missing Julia both sexually and emotionally. He was away for six months (from 21 December 1880 to 20 June 1881), their longest separation after a decade of marriage. Even the form of his letters revealed his feelings: he addressed her affectionately with variations on the theme "my (own) dearest (or darling) wife (or Julia)" and signed himself with similar endearments "(ever) your (own) loving husband" or, at his strongest, "goodbye darling with fondest love yours ever". Conventionally these were followed by his unaltered signature, "S. W. Griffith". The texts of the letters show a progressive realisation of what he was missing: after seven weeks' separation he sent her "twenty thousand kisses"; a week later he regretted, but was not surprised at, her loneliness — for it was reciprocated: "you wonder whether I think of you as often as you do of me. I think so, and that is why I write such long letters. It is like talking to you". Three weeks later he was more explicit: "I always do feel tired when I have not the pillow of your dear heart to lay my head upon. I am looking forward to the time when I shall again clasp you in my arms and I am sure you are doing the same". A week later he was "getting very homesick. I have no leisure to get dismal, but I have been away from home and you a long time now and I feel that it is time I started homewards", and he asked what to him was obviously a redundant question: "shall we not be happy to be in one another's arms again"; a fortnight later he was "dreadfully homesick". Three weeks later he was beginning to anticipate his return, hoping soon "to be once more in your arms . . . I am quite
homesick and longing to get away and impatient of any delay’; and a week later, just before he left London, ‘‘I shall look forward most eagerly to our meeting’’.

He was a fond and proud parent, who missed his children. As he told Julia, ‘‘every one admired’’ the photographs of his children. He always exhorted Julia to kiss them for him, and sent them regular messages through her. These were usually variants on an inevitable Victorian theme — being ‘‘good’’ — but also showed concern for their progress and problems. He expected a letter from nine-year old Eveline, and apologised for not keeping his promise to write to her; he was worried about eight-year-old Llewellyn’s inability to distinguish letters, discussing the problem with relatives (perhaps the print had been too small?) and expressed his hope that ‘‘he would be able to read quite well when I come home’’; six-year old Nellie and three-year old Percy received no individual messages — perhaps Griffith, like his own father, found it difficult to communicate with children at their ages. He was more concerned with Julia than with her babies. Julia was again pregnant, and their sixth child, Alice Gwendoline, was born on 21 February 1881.

Although Griffith was a dutiful son, he had transferred his main allegiance from his parents to his wife. He did not write to them, although his mother sent him letters; instead he asked Julia to give them his love and tell them any matters of interest. He was, however, punctilious in visiting his parents’ relatives and their friends; and was gratified to discover in Wiveliscombe that his parents were still ‘‘evidently held in very kind remembrances’’.

That he seemed still insecure is suggested by his dependency on his extended family. Perhaps the public man in an alien environment needed the reassurance of recognition from kin who would appreciate his achievements. He visited an inordinate number of relatives, not only those of his parents, but also Julia’s. Of the thirteen weeks he stayed in Britain, one-third was spent outside London, mainly with relatives, although he also contacted such friends as Glanville Wills.

Other emotions coloured Griffith’s return to Taunton to see the cousins, particularly Emma (with whom he had been passionately involved fifteen years previously) and her sister, Eliza. Although Samuel, apparently frankly, assured Julia: ‘‘she [Emma] is a good deal altered — more in manner than features but is still very nice. You need not be jealous! I have seen no one to compare for a moment to my own darling’’, his account to Julia may conceal some renewed emotions, for he saw much of both Emma and Eliza.

Surprisingly, he did not visit Wales, especially as he tried to trace Julia’s background: he found at Kinross ‘‘graves of some of your ancestors’’.

Meetings with other dignitaries revealed his vanity and ambition. He had armed himself with letters of introduction while in Queensland and used these unsparingly, sometimes finding them hollow: Lord Kinnaird ‘‘had quite forgotten Mr Douglas’’’. Nothing gave him more pleasure than his attendance at a Lord Mayor’s banquet at the Mansion House for the governor and directors of the Bank of England, which he described in full detail for Julia. A dinner given by the Fishmongers Company — ‘‘one of the wealthiest of the old London companies (they have no more to do with
fish or fishmongers than I have]]' — at their magnificent hall was similarly impressive, and Griffith was flattered to be asked to reply to the toast of the colonies.

His ambitions were centred on politics and law and he used the journey to widen his experience. In Rome he visited parliament; in London he listened to debates in both Houses and met parliamentarians; he had discussions with officials of the Colonial Office (with the secretary of state, Lord Kimberley, on the steel rails commission; with the permanent under-secretary, Robert Herbert, on wider issues; with the under-secretary, Grant Duffy; and with John Bramston on Queensland matters). Griffith was pleased to have been made an honorary member of the City Liberal Club; he listened carefully to parliamentary debates, such as the one on ending obstructionism, for future application in Queensland.

Not all of his experiences were rewarding, however. While gratified at becoming a member of the Royal Colonial Institute, he was terribly disappointed at one of its meetings, telling Julia that the paper on immigration was "very stupid and was followed by an equally foolish discussion in which I was going to take part but had not an opportunity before the meeting was adjourned".

The justification for Griffith's visit had been to apply his political and legal knowledge to the tangles of the McIlwraith cases. His vanity, or perhaps only his confidence in his ability, was illustrated when he told Julia that "Sir Hardinge Gifford (about the best counsel in England) is to appear for Mr McIlwraith. They were not going to have him till they knew I was for Mr Miles". He made the most of his presence in London by attending various courts, and he was shown hospitality by several lawyers, notably the retired chief justice of Queensland, Sir James Cockle. In Europe he had long discussions with an English barrister on shared legal interests.

Griffith had earlier won a scholarship in the aesthetic arts, but it remains as difficult in 1881 as in 1866 to judge his taste. In Paris he went to Notre Dame, in Rome to St Peters, and in Florence he visited the cathedral and the two great picture galleries. In London he visited galleries, including the National Gallery (where he saw "the pictures") and the Dore, where he bought two fine engravings (otherwise unidentified). His taste in clothes was dandified, and he often visited tailors in London, buying a black tall hat and new gloves as soon as he arrived. In the dramatic arts he was disappointed by the acting of Henry Irving.

His interests were in worldly achievement, rather than in spiritual hopes. He was most enthusiastic about the conversations he had with "very celebrated men" at a reception of the Royal Society. He was impressed too, when he visited Dr Murray in his large room full of material collected for the Oxford English Dictionary; "he has been many years at it and will be ten more before it is finished". This long-term goal was more appealing to him than any notions of eternity. He continued to observe Christian forms, however, attending church half of the Sundays he was in Britain, but most of his visits were to Anglican and not to Congregational churches. He went to Westminster Abbey twice, noting an excellent sermon once, and on the other visit hearing the Bishop of St Albans denouncing secular schools [which Griffith had helped introduce to Queensland] and once to St Margaret's because he was late for the service at the Abbey.
At Blackheath Congregational he heard "a man of note [who] . . . preached as bad a sermon as I ever heard" and he took pains to leave his Nonconformist host early so that he would not have to suffer again. His relationship with the members of his father's church was confused. He took up a number of his father's introductions, some reviving the hospitality he had enjoyed in 1866, but he was occasionally placed in a false position. Thus after he had lunched with a Congregationalist, Jennings, he was taken to a committee meeting of the Colonial Missionary Society, only to discover that he was expected to make a speech. He told Julia:

I felt rather embarrassed, for I really know little more than you do about their operations in the colony, but I managed to conceal my ignorance and I think gave them some valuable information.

He also went, at his father's instigation, to the offices of the Bible Society.

A characteristic of Griffith's that is clearly reflected in his letters is his meticulous love of detail. Just as his diaries record the weather during sea voyages, so his letters are mainly chronological accounts with rare glimpses of any emotions. Both letters and diaries suggest he was a hypochondriac. He told Julia of suffering pains with "a bad attack of influenza" and a slight threat of his "old complaint" (piles); he was obsessed with London's grime: "your nostrils are like chimneys — quite black inside and your nails get dirty in half an hour. Of course I never go outside without gloves but even in the house your hands are dirty almost as soon as they are washed"; he remained a cold bath fanatic even in London, only occasionally letting "a little warm water in".

After his return, Griffith's political challenges to McLlwrath and his party were not confined to the steel rails affair. On 20 July, a few days after the final parliamentary defeat on this issue, a letter to Governor Kennedy, signed by Griffith, Dickson, Miles and McLean, protested against the granting of an additional £100,000 for supply. The grounds were technical: that the estimates had not been laid before the Legislative Assembly. Griffith had protested on a point of order in the House, but had been overruled by the Speaker, and no vote had been taken. The letter to the governor suggested that he should not have assented to the resultant supply bill, but should have referred it to London. Kennedy disagreed, whereupon Griffith called on Kennedy and requested him to reconsider the matter, which he refused to do.69

In 1882, Griffith again raised charges of corruption against the McLlwrath government, this time against his postmaster-general, Boyd Morehead. Griffith claimed to have been informed that the price of land on the Cullin-La-Ringo run and on three stations in the Springsure and Peak Downs district had been reduced from twenty to ten shillings for northern capitalists, and that Morehead had collected 2½ per cent commission from the purchasers. A select committee was appointed, but found no positive proof. Griffith refused to name his informant, and Morehead refused to answer rumours as being inconsistent with his "honour" and "dignity". No evidence exists in the Griffith papers as to his informant.

The McLlwrath government was increasingly attacked by Griffith's party for the extent of its support of black labour. Although the Liberal governments of Macalister, Thorn and Douglas had made no changes in the sys-
tem, Griffith became very aware of the strong feeling outside Queensland against the traffic, both in recruiting and on the plantations. His visit to England in 1881 extended his knowledge of the campaign being fought (particularly by humanitarians and missionary groups) against the abuses of the traffic. In March 1881, while he was in England, questions were asked in the House of Commons about recruiting, particularly on the supply of firearms to islanders returning to their homes. A Colonial Office clerk on 30 May minuted:

the Queensland government does not seem to realise the state of feeling that wd. be aroused in this country if these papers were moved for in Parl. This Office has been remonstrating with Queensland for many years, and matters seem to be pretty much where they were.\(^{71}\)

As ever with Griffith, it is difficult to identify his own convictions about this question. It is doubtful whether he became an abolitionist before 1883, although he was certainly opposed to abuses. Whatever his personal feelings, he used the issue as a political stick to beat his opponents.

When the Colonial Office objected to the supply of arms, the McLlwrath government replied that it was no use Queensland legislating because the islanders' needs would be "met by an increased demand on French, German and American traders".\(^{72}\)

When Sir Arthur Gordon and Edward Wilson were appointed in 1883 by the British government to investigate the labour traffic, the Wide Bay and Burnett Farmers' and Planters' Association of Maryborough initiated Queensland protests. McLlwrath supported these protests, complaining to the Colonial Office of great "injustice to Queensland".\(^{73}\) On behalf of the Opposition, Griffith promised to support any action taken by Britain in concert with other nations to control the arms traffic.

By 1883, the issue had become entangled with another, the future of New Guinea. The Queensland Liberal governments, in which Griffith was a minister, had passed motions in the 1870s supporting the eventual annexation of New Guinea. As European use of the islands increased, so did the chances of eventual annexation. Queensland's control of the islands sixty miles from her coast, particularly of the Torres Strait islands, engendered constant concern for the future of this area.

When in April 1883 McLlwrath ordered his magistrate, H.M. Chester, to take possession of the islands of New Guinea for Britain, Griffith was placed in a difficult position. He approved of British expansion in the Pacific, and was not opposed to Australian control over New Guinea. He had, however, to oppose McLlwrath politically, so he attacked him with the allegation that McLlwrath had annexed New Guinea so as to recruit more labourers for the Queensland sugar fields. This claim was denied by McLlwrath, and Griffith found no definite evidence.\(^{74}\)

While leader of the political Opposition, Griffith's status among barristers remained high, most of the profession recognising him as preeminent and likely to become a judge. Suggestions had been made to him as early as 1874, and McLlwrath had made a clear offer in 1879.\(^{75}\) Lilley was appointed chief justice on 25 June, and Harding became a puisne judge on 14 July 1879. When Lutwyche died on 12 June 1880, Griffith's name was again canvassed, but he declined to be considered. On 13 July Pring was "sworn in after objection".\(^{76}\)
In the sixty months from December 1878 to November 1883 Griffith appeared in seventy-four Supreme Court cases, covering wide fields of law. In keeping with the remarkable suggestion that this barrister of thirty-three was competent to act as Chief Justice, it was accepted that he was the master of all legal subjects. The most important politico-legal cases were constitutional (the four Miles-McIlwraith hearings); but the more familiar litigations led in numbers: property (11); contracts (10); probate (6) and municipal law (6). These totalled just over half of the cases, the remainder...
illustrating variety; company (5); insolvency (5); admission to the profession (5); practice (4); criminal (4); libel (3); Gold Fields Act (3); Towns Police Act (2); Electoral Rolls Act (2); insurance (1); contempt of court (1); Cattle Stealing Act (1) and Brands Acts (1).  

Amongst the property cases was his appearance for Dr J. Quinn, the head of the Roman Catholic church in Queensland, which must have caused anguish to the Rev. Edward Griffith.  

Another property case again raised the interpretation of the residence clauses of the 1868 Crown Lands Act. Griffith appeared for Mrs Roxburgh, against the nominal defendant appointed by the Crown. She was the widow of a Sydney solicitor who, on a visit to Queensland in 1868, had chosen land on Westbrook station on the Darling Downs. Roxburgh had declared that he lived in Queensland, but he returned to Sydney, and at no stage made it clear whether he intended to settle eventually in Queensland. After discussion by Queensland land ministers and commissioners, a lease was issued to Roxburgh in November 1869 and certificates of fulfilment of conditions were granted in 1871 and 1876. Applications for a grant made between 1876 and 1879 for a grant were, however, refused.  

Griffith argued that residence at the time of application was not a condition of the lease, but a matter of qualification. If it were a condition, it was one that, once broken, was irreparable; if the government after knowledge ratified the contract, it waived all right to refuse to issue a grant. He submitted that the only question was whether the government could waive a fraud or illegality or any breach of law. Although Harding refused an application by Garrick, as attorney-general for the Crown, for a non-suit on the grounds of non-residence, in his judgment he agreed that Roxburgh had never been a resident.  

A further property case uncovered a limitation in ministerial powers. Griffith appeared for an applicant under the 1876 Crown Lands Alienation Act, who, in compliance with the provisions of the act, had had his claim approved by the commissioner for crown lands — an approval that was pronounced in open court — however, the minister for lands, without giving reasons other than that he was acting in good faith for the public benefit, had then refused to confirm his application. Griffith argued that the applicant had a statutory right to have his claim confirmed, as the relevant section provided that the minister shall confirm the commissioner’s approval. Chubb, for the Crown, argued that the minister had a discretionary power. Harding and Pring accepted Griffith’s contention, especially as the defence had not “shown a want of compliance of some condition or provision” of the 1876 act.  

An example of Griffith’s appearance in a contracts case was a dispute over the construction of the railway between Gympie and Maryborough. He appeared for the contractors, who claimed £27,000 damages from the government because the actions of government agents (the chief and superintendent engineers) had led to delays.  

The court found for the government by examining the rights given to its engineers under the contract, which was to be construed legally, and not strained one way or another. Griffith had contended the contract was ambiguous and “must not be constructed so as to conflict with the maxim ‘that no man can take advantage of his own wrong’”. The court held that
the contract made the certificate of the chief engineer a condition precedent to any action by the contractor, and his conduct had not been inequitable. Griffith’s objection that the contract was unreasonable was answered by precedents accepting the special “position which the law gives to engineers, architects and persons appointed by the parties to decide readily and with dispatch as contracts go along.”

Another contracts case depended on colonial working customs. The owner of the Darling Downs station “Goomburra” wanted a cook, and had agreed to pay the passage money and expenses of an applicant from England, who promised to work for not less than three years at an agreed wage of fifty pounds a year. The cook arrived, but was discharged when she refused to do what she regarded as extraneous work (churning and making butter and taking sole charge of the dairy), whereupon she sued for wrongful dismissal and for arrears of wages. Griffith, appearing for the station-owner, alleged that by custom dairy work was included in the duties of a cook. The court disagreed; there was no evidence that it was intended that she should do the extra dairy work; no custom of the colony requiring such work had been proved; the cook had not known of such a custom. It held that since there was an implied contract to retain the cook’s services for three years, her dismissal had been unjustifiable.

One insolvency case should have had personal significance for Griffith. In September and October 1881, three months after he returned from London, he appeared to oppose the grant of expenses to a trustee represented by Garrick. The main objection was to the payment of the trustee’s trip to England, for which he had claimed passage money and a guinea a day (totalling £376.9.6). Pring found that these and other expenses were reasonable, and that the creditors could authorise such a charge from the estate. Griffith appealed, but the court again overruled his repeated objections that the trip was unreasonable, the trustee could have employed an agent, and that as the trustee had other reasons for going to England, the amount for expenses should be reduced. Griffith had not declined to accept expenses for his trip to London.

Griffith successfully used the criminal law maxim “every man is presumed to be innocent till proven guilty” in obtaining the quashing of a sentence for illegal cattle branding. A calf was found with a second registered brand over that of its owner’s. The Charters Towers magistrate convicted the registrar of the second brand on whose property the calf had been found, but the Supreme Court agreed with Griffith that the mere fact of the brand being over that of the registered owner of the beast did not raise the presumption that the owner of the second brand either put it there or allowed it to be put there. Griffith had argued that “there was absolutely no evidence either direct or presumptive” of the accused willingly permitting the calf to be branded.

A murder case reached the Supreme Court on a case reserved by Judge Sheppard on account of uncertainty as to whether the Cooktown circuit court had jurisdiction to try the prisoner. The exact boundaries of the colony of Queensland were at issue. Griffith appeared for the prisoner, who had killed a man on Possession Island in Torres Strait, about a mile and a half from the mainland. Griffith argued that, despite Letters Patent of 1862 and 1872, the boundaries of the colony did not include this island,
and that these boundaries could be altered only by an act of the Queensland parliament. Pring, for the Crown, relied on the proclamation of 22 August 1872 in the Government Gazette, which had been based on the 1872 Letter Patent, extending the boundaries to islands sixty miles off the coast. He also referred to the 1878 Letters Patent and the subsequent proclamation of 21 July 1879.

The judges (Lilley and Harding) agreed that the Supreme Court had jurisdiction. Lilley said that "nothing can be clearer from a long chain of history and practice that the Queen has the prerogative, by Letters Patent, to erect unoccupied lands into colonies". Although a colonial act had not been passed, Lilley believed that it was sufficient that the last Letters Patent had been issued "upon the condition that a statute should be passed by the colonial Legislature". This question of constitutional law was, despite the judges' assertion, still a contentious matter a century later.

An odd criminal case reached the Supreme Court when a person accused of "maliciously wounding a Tasmanian diamond snake" successfully appealed for the conviction to be quashed. Griffith's argument, which was accepted by the court, was that a snake was not a subject of larceny at common law, and was not an animal ordinarily kept in confinement. The Injuries to Property Act, under which the information was laid, specifically referred to dogs, birds, or other animals (not cattle) "being either the subject of a larceny at common law, or being ordinarily kept in a state of confinement or for any domestic purpose".

Griffith once defended the Queensland Evangelical Standard, the paper with which his father was associated. The paper had published a letter that read, "Pat Perkins, a thorough bigot and disciple of James O'Quinn [the Roman Catholic Archbishop]. The sooner the colony is rid of such creatures, the better for morality and religion". Perkins, not surprisingly, sued for libel before Harding and a jury of four. The judgment was for damages of only one pound, in addition to two pounds, paid into court, and costs. An appeal, in which Griffith again appeared for the paper, was lost.

The powers of municipal authorities were the subject of several cases in which Griffith appeared in the Supreme Court. One rested on the interpretation of the 1878 Local Government Act where Griffith appeared for the attorney-general, ex relatio a resident Thomas Finney, against the Shire Council of Toowong. Griffith's successful argument was that the words "alter in width" in a section of the act did not empower the council to decrease the width of the road. Before the separation of Queensland from New South Wales a common and public highway called "the river road" had existed along the bank of the Brisbane River, and this road had persisted. The effect was of two parallel highways — one of the road, the other the river, and between these highways, no private rights existing, and during the whole length of them running alongside of each other a right to pass and repass on every spot from one to the other free from obstruction.

Griffith argued that, by erecting a building on this river road, the council had obstructed Finney and other residents. Garrick argued that the council was justified because it had altered the road so that the building was between the river road and the river. Harding accepted Griffith's argu-
ments, pointing out that if a road were narrowed, there was no provision for what was to become of the soil by which it was diminished.89

Griffith appeared in an electoral case in 1882 for Robert Bulcock. As leader of the Liberal party, he placed much reliance on the extra-parliamentary Liberal Association and its organisers, Bulcock and R. P. Adams. On their advice, and the evidence from his own travels, the emphases in policy statements were adjusted to fit the demands of Queensland's differing areas. He advocated a widening of the franchise, realising the need to court the votes of workers to counteract McIlwraith's appeal to the employers.

Griffith strongly supported Bulcock's tactics of close attention to the electoral rolls, using any legal device that was to the advantage of his party. So skilful had Bulcock become, that the word "bulcocking", meaning "keeping sympathisers on the [electoral] rolls and opponents off", came into the language. By the 1879 Electoral Rolls Act, intending voters had to apply in writing or in person for registration, and courts were held four times a year to check these claims. The clerks of petty session had the task of keeping the rolls up-to-date, and a skilful party organiser would raise with these clerks all possible objections against hostile electors. Bulcock and his assistants were also instrumental in ensuring that Liberal voters exercised their rights on polling days.

The legal case followed when one of Bulcock's objections to an enrolment under the 1879 Electoral Rolls Act had been overruled by magistrates. Griffith appeared successfully in the appeal against the attorney-general acting for the magistrates. The case rested partly on technicalities as to whether the elector's name was on the "annual" or "supplementary" list and the date of the objection. Griffith argued that granting costs against Bulcock was not justified, as it had not been determined that the objection was "groundless, frivolous or vexatious". The appeal was granted, the magistrates' order being held to be extrajudicial.89

Griffith was involved in cases of admission and disbarment of legal practitioners, including the disbarment of Frederick H. Swanwick. Before the case, Griffith had reason to suspect Swanwick's stability. On 19 May 1880, when Griffith successfully appeared for a client against Swanwick, a dramatic scene had ensued: Swanwick's brother, Sidney, armed with a loaded revolver and bowie knife threatened Griffith. Sidney was grabbed and later gaol for contempt. He wrote to Griffith from gaol apologising for his conduct and claiming that he had not intended to shoot him or anyone else, and that he was not a cold-blooded assassin. Three weeks later he wrote again from gaol, repeating his apology.91

Bulcock and the Liberal party were involved in the disbarment case against Frederick Swanwick. In a court revising the electoral rolls, Swanwick had appeared to claim costs for J. T. Ellis, whose enrolment had been queried. Although Swanwick claimed he had been instructed by Ellis, this was denied in affidavits by him and Bulcock. Griffith urged Swanwick's disbarment, but the lawyer was given the benefit of a doubt: he had had discussions with another political agent (presumably for the opposing party) and the court ruled that "it is probable he believed ... that his instructions ... justified him in making the claim for costs".92 Swanwick was, however, disbarred and struck off the roll of barristers on
Griffith’s income had continued to grow, and he and Julia lived in a home commensurate with his status. They had begun planning when their fifth child was due, accepting a tender for £6000 a fortnight before Edith Margaret’s birth on 9 May 1879. Their house, "Merthyr" was completed in fourteen months, and on 26 August 1880 the proud owners, who had been living on the site, took possession. The new home was imposing
The exterior of Griffith's home, "Merthyr". (Courtesy of T.S.G. Brown.)

"Merthyr" seen through the trees. (Courtesy of T.S.G. Brown.)
Floor plan of "Merthyr".
[From Jack's Cutting Book number 15. Courtesy of the Oxley Memorial Library.]
externally and internally. Its setting was its first attraction: the large, irregular sixteen-acre block, 137 yards wide and measuring 391 yards on the eastern and 325 on the western boundaries, fronted onto the broad Brisbane River. Griffith had bought ten acres of the block in 1874, the remaining six acres in December 1879.

The gardens had been planned by the Griffiths themselves, and many of the trees and plants had reached maturity when they took possession. An imposing drive led to the house. Near it were lawns and, further away, less formal gardens. A tennis court was later built on the south-eastern side. A Canadian visitor wrote admiringly of the charming house and its beautiful grounds, filled with richly flowering shrubbery and flowers, palms and groups of bamboos and the banana tree . . . azaleas, begonias the coral tree and others.

The house itself was a single-storied, spacious brick bungalow [of almost one hundred squares]. Its plain exterior, with a sloping iron roof in several sections, was crowned by six chimney pots. On all sides were verandahs, nine feet wide with wooden railings, which extended the living space [about thirty-one squares]. These verandahs were decorated with sets of

The verandah of "Merthyr".
(Courtesy of T.S.G. Brown.)
twin wooden pillars surmounted by simple arches. The front verandah was bisected by a solid porch with columns and stone steps.

Inside, the central feature of the house was its large and lofty ballroom reached through the porch and entrance hall. The ballroom was surrounded by other rooms: going from the left of the entrance, first came the imposing drawing room; then the library; then a bedroom with its dressing room. Next came the dining room with its adjacent pantry, wine and china rooms. On the right of the entrance hall was the master bedroom with its boudoir, closet and dressing room. Griffith preferred this bedroom to the one in their previous house: "the room is more cheerful than the old one. You can lie and see the garden and all that goes on". Two bedrooms and two nurseries opened onto passages leading to the back of the house. Behind the central block were two wings: to the left was a pantry; and the kitchen with a scullery attached; to the right, linked by the back verandah, were two bathrooms, two servant's rooms and two store rooms. When the Griffiths moved in, the children ranged in age from eight years to two.

The rooms were ornately furnished. There were nine fireplaces (one in each of the four bedrooms and the two nurseries, and one each in the

The ballroom of "Merthyr".
[Courtesy of T.S.G. Brown.]
drawing room, dining room and library). Most fittings were of cedar. The central ballroom suggested to many observers an Italian influence; the word ‘Salve’ (‘greetings’) was written in the glass above the main door, and the sixteen windows were placed high up against the plaster ceiling, opening up into the highest section of the roof. The ceiling was embossed and gilded, and the walls were plastered. The main feature was a ledge running right around the room, about twelve feet above the floor, set below the windows. Beneath this ledge was a decorative plaster frieze, which in turn surmounted the decoration of the lower walls, square columns capped with arches. Most of the arches provided recessed areas which Griffith filled with pictures. Some were originals, including a Turner landscape exquisitely coloured, and watercolours by Jenner.

The exterior lighting was supplemented at night by gas mantles set in ornamental brackets along the walls. Potted plants — palms, poinsettias and aspidistras — set against columns provided further decoration, as did a grandfather clock on the wall near the entrance hall. The wooden floor was partly carpeted, but the carpet and central table and chairs could be removed when the room was used for dancing and for dinner parties.

The drawing room was reserved for smaller parties and family relaxation. Its main features were an Italian marble fireplace, white and gleaming, surmounted by a large mirror; and a central chandelier of cut glass pendants, whose motifs were repeated on two smaller bracketed fittings each side of the mantelpiece. The ceiling, lower than in the ballroom, was plastered, and both ceiling and walls were decorated less elaborately than those of the ballroom. Paintings adorned the available wall space, restricted by the openings: two wide doors to the side verandah, doors to the entrance hall and ballroom, and three windows on to the front verandah. Julia filled the mantelpiece and side cupboards with ornaments, mainly of china. Dresden shepherdesses, angelic figurines, fine plates, and smaller decorative pots. The furnishings of these rooms were expensive; some were imported from Italy, and other pieces were in the Sheraton and Chippendale styles. The ballroom and drawing room were the showpieces of the house; the private rooms, library, dining and bedrooms, were less ornately decorated.

“Merthyr”’s New Farm address was itself prestigious; in Moray Street alone lived three other politicians — Horace Tozer, John Turner and Theodore Unmack, and a surgeon, Dr White. Griffith’s home had rivals: the politician James Dickson lived in the elaborate two-storied “Toorak House” in Hamilton; the doctor C. F. Marks lived on Wickham Terrace in a three-storied home with twelve main rooms, including seven bedrooms, and drawing and billiard rooms. Thomas McIlwraith’s home, sprawling “Auchenflower”, rivalled “Merthyr” socially and was the meeting-place for Griffith’s political opponents.

Griffith was to defeat the McIlwraith government on 5 July 1883 on its plan to build a transcontinental railway by the land grant system. The bill authorised the construction of a line from Charleville to the Gulf of Carpentaria, with branches to Hughenden and Cloncurry. An English company had made an agreement with McIlwraith to complete the line in seven and a half years in return for receiving about twelve million acres of land (over ten thousand acres for each mile of the line).
Griffith’s views were more complex, as always, than his political opposition to the proposal would suggest. As a member of Thorn’s cabinet in 1876, he had supported a railway reserves bill that differed only in scale, not in principle, from McIlwraith’s proposal. Moreover, while Griffith was in London in 1881 he had had “short but friendly conversations” with the English company’s solicitor about the planned transcontinental railway syndicate, and had been kept informed of the progress of the syndicate.

Griffith also had inside knowledge of the syndicate as a barrister, for on 23 May 1882 he had been asked to advise *ex parte* the Australian Transcontinental Syndicate, had written his opinion on 27 May, had received a general retainer in the case on 29 August, and had attended conferences on 10 and 19 September. By 1883 he had realised the political mileage to be gained from opposing the syndicate, especially after an anti-Transcontinental league had been formed. He met representatives of this group on 2 May 1883. Griffith’s dealings with both sides make it easy to understand why contemporaries such as Macrossan could discern a “moral twist” in his behaviour!
In the elections held in August, Griffith stood again for the two-man seat of North Brisbane, William Brookes being his fellow Liberal candidate. They seemed likely to be unopposed, until, somewhat bizarrely, erstwhile leader Douglas decided to contest the seat. This may have been a belated challenge for party leadership. Douglas announced after several years of voluntary seclusion that he could not follow Griffith’s leadership. The result was clear-cut: Griffith obtained 1,118 votes, Brookes 972, and Douglas 640.

Griffith had been closely involved in the campaigns in other electorates, helping candidates chosen by his party caucus. Although he was tending favouring a “one man, one vote” policy, he saw no incongruity, so long as plural voting was legitimate, in making certain that he was enrolled to vote in as many electorates as possible. The 1883 rolls reveal his name in four electorates: Fortitude Valley (based on his home); North Brisbane (based on his Queen Street legal office); Enoggera (based on a freehold property), and Moreton (based on another freehold property).

When Griffith took over from Douglas, the Liberals had nominal support from twenty-one members, while McIlwraith could count on twenty-eight with six members claiming to be independent. Figures based on actual voting give the split as thirty-two to twenty-three. There was a surprisingly high turnover of members between 1878 and 1882, with a total of twenty-three new representatives being elected. These did not noticeably change the balance of power in the Legislative Assembly: overall, Griffith had gained two supporters at McIlwraith’s expense. Five seats changed to Liberal: F. Beattie for R. Pring in Fortitude Valley, W. Brookes for A. H. Palmer in North Brisbane, J. Francis for J. M. Thompson in Ipswich, J. F. Buckland for F. H. Swanwick in Bulimba, R. Aland for G. H. Davenport in Drayton/Toowoomba. Three seats were lost to Liberals: W. Allan for F. B. Kates in Darling Downs, H. Palmer for J. Douglas in Maryborough, J. Ferguson for W. Rea in Rockhampton. Only two members, A. Meston and F. H. Stubley, had switched political allegiance. W. H. Groom, whom McIlwraith alleged had been returned as a Nationalist in 1879 and “deliberately ratted” when not made a chairman of committees, was by conviction an agrarian liberal who usually preferred Griffith’s policies. The most important turncoat was A. Meston, later protector of the Aborigines, who left Griffith after a bitter legal conflict. In the midst of this fight, on 31 December 1881, he wrote to McIlwraith:

I am just as unable to express my gratitude to you as my contempt for the action of Griffith . . . he is a mean, vindictive skunk, treacherous as an Arab and [as] coldblooded as a Greek . . . [while] you are the ablest statesman we have.

Meston left the Assembly on 4 July 1882 after he was declared insolvent on the petition of J. B. L. Isambert, newspaper proprietor of the Nord Australische Zeitung, who replaced him as the loyal Griffith member for Rosewood.

The Liberals had been holding what Griffith described in his diary as “caucus” meetings since 1873, and these became more regular after he became leader. The caucus presumably discussed parliamentary policies and tactics, and did much to diminish the previous independence of members. It also selected candidates: for instance William Brookes was
chosen to contest North Brisbane by-election at a meeting on 28 December 1881.

Although some people found Griffith charismatic, his appeal as a leader came more from his intellectual capacity than from personal charm. William Rea, one of the two representatives for Rockhampton from 1879, was one who placed "Griffith on a pedestal several hundred feet high . . . It was hero-worship gone mad".103

Most of Griffith's support came from Brisbane and nearby seats. He needed to win outside seats if he was to secure office. In the twenty months to the 1883 elections, he preached the Liberal message in most parts of the colony. In January and February 1882, he made a prolonged visit to the northern electorates of Cook, Townsville and Kennedy. In June 1883 he spent a week in the Mackay electorate. In July 1883, he travelled in the north and west, speaking in the electorates of Townsville, Kennedy, Burke, Gregory, Mitchell, Warrego and Maranoa. In September he covered Blackall and Rockhampton; in October, Maryborough and Gympie. Presumably his willingness to travel and the publicity given to his speeches helped the party's cause. Prominent Liberal politicians had been persuaded to change electorates: A. Rutledge moved from the Brisbane metropolitan seat of Enoggera to northern Kennedy; P. McLean from Logan to Burke, and T. Macdonald-Paterson from Rockhampton to Mitchell. The party won six country seats in the election: Cook (after a disputed return), Kennedy, Clermont, Leichhardt, Rockhampton and Burnett.104 Griffith had successfully led his party to electoral victory.
Griffith was to be premier from 13 November 1883 to 13 June 1888, continuing to practise as a barrister throughout these fifty-five months. He occupied the posts of colonial secretary and secretary for public instruction himself, and made A. Rutledge, a loyal supporter and fellow barrister, attorney-general. Garrick, also a lawyer, was colonial treasurer and postmaster-general. To offset the preponderance of lawyers, Griffith chose Miles as secretary for public works and mines, and C. B. Dutton (another squatter) as secretary for public lands. When the experienced Dickson, an officeholder under Macalister, Thorn and Douglas, returned from England on 31 December 1883 he replaced Garrick as colonial treasurer. The inclusion of Miles (representing Darling Downs), Dutton (representing Leichhardt) and Rutledge (representing Kennedy — the only northern seat won by Griffith) was intended to emphasise that the ministry was representative of all of Queensland. The fact, however, that Rutledge had previously held Enoggera was not lost on his opponents. On 24 June 1884, after Garrick had resigned to go to London as agent-general he was replaced by another lawyer, Mein, who became postmaster-general and representative of the government in the Legislative Council.

Legal actions over disputed elections were to improve Griffith’s position. The election of the McIlwraith supporter in Cook, F. A. Cooper, was declared null and void, and he was replaced by a Liberal, T. Campbell. Likewise the brewer Perkins, a McIlwraith stalwart, was condemned for liberally dispensing ale to ensure his victory in Aubigny, and he was replaced by J. R. Campbell, another Liberal. Before Perkins left parliament, he attacked Griffith for “lying wholesale . . . aided by relations under the cloak of the Gospel”.

Griffith began his term with the comfortable majority of 35 to 20. The Liberal party was close-knit and strictly controlled by Griffith. Caucus meetings continued, as did the frequent social gatherings of the faithful.

The newly-elected ninth parliament met on 7 November. The bitter tone of the previous parliament was again evident. McIlwraith nominated J. Scott, a Nationalist candidate, for Speaker, whereupon Griffith nominated W. H. Groom. The Nationalists concentrated their attacks on Groom, citing

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*Whate’er is best administered is best*  
Pope
his criminal record, absenteeism, incapacity and bias. The Liberals retaliated: McIlwraith "is not a man of better virtue, or better able to judge of moral principle"; his followers had "proved themselves utterly incapable of anything approaching mercy . . . Once let a man be condemned to be hanged, and they hang him, and as for Mr Groom, if they could they would hang, draw and quarter him".5

After adjourning, the House met again on 13 November. Griffith's new ministry was announced and the House further adjourned to allow Griffith to attend an intercolonial conference on external affairs in Sydney.

Griffith was primarily recognised there as a lawyer, thus a Victorian delegate, Alfred Deakin, described him as "the leading barrister of Queensland . . . lean, ascetic, cold, clear, collected and acidulated . . . [with a] . . . sceptical and almost cynical manner".6

Deakin doubted the strength of Griffith's federal aspirations, but this doubt reflected the hopes of the Victorian representatives for drastic action on annexation of the Pacific islands by Britain. Victoria's premier, James Service, who had sensed in Europe in 1881-82 "the emergence of a new imperial spirit", had hoped for support from Queensland.7 He had backed McIlwraith's purported annexation of New Guinea in 1883.

Griffith had been placed in an awkward position by McIlwraith's bold step. After consulting "such of my friends as I have been able to see", Griffith decided "it would not be expedient to take any action with reference to the refusal of the Imperial Government to ratify the attempted annexation".8 Yet Griffith, no less than McIlwraith, believed that Australia should concern itself with the issue of European nations gaining control of the islands of the Pacific. Griffith, too, was aware that Service was using McIlwraith for "tactical reasons, with New South Wales in mind", wanting Queensland's support against the "unwilling and preoccupied New South Wales government".9 Service had hoped that McIlwraith would be Queensland's representative to the Sydney convention, but realised after the August elections that the Nationalist ministry would be defeated when parliament met. Hence Service wrote to McIlwraith suggesting that each colony send two delegates. When McIlwraith invited Griffith, as the likely premier, to comment he was cautious:

if Mr Service's suggestion is generally adopted by the other colonies (as to which however I have reason to entertain serious doubts) I should be disposed to act as one of the Representatives of this colony, if circumstances rendered it possible for me to attend the conference or convention.

I observe, however, that it is to be held in the last week in November, before which time our Parliament must necessarily meet. Under existing circumstances and having regard to the pending general election and its possible results, it appears to me to be premature, and indeed impossible, to make any definite or binding choice of representatives for this colony at the present time.

Service told McIlwraith on 7 October that it had been exceedingly fortunate that you took the initiative in asking Mr G. if he would go with you. That broke the ice, and he can hardly fail to reciprocate. I shall be very sorry if any hitch should arise to prevent your presence — it would be a calamity.10

He urged McIlwraith to inform Griffith of Canadian precedents for having
dual representation. Despite Service's hopes, Griffith as premier told McLlwraith on 19 November that having consulted all the other colonies, none of whom planned to have the Opposition represented, that he could not reciprocate by inviting him to be a representative.

At the conference, Service's policy of annexation of many Pacific islands, including the New Hebrides, won support only from New Zealand. The other colonies agreed with Griffith's resolutions, which rated New Guinea as far more significant than the New Hebrides. Britain was urged to annex eastern New Guinea, and the colonies agreed to help pay for its administration. All the colonies supported the declaration of an Australian Monroe doctrine, whereby any further foreign annexations of any islands in the Pacific south of the equator should be opposed, and all showed their resentment against the presence of convicts in New Caledonia.

Griffith was a supporter of eventual federation, in which he hoped to participate politically, but he did not believe its time had yet come. His proposal to establish a federal council was backed by Service, who hoped to begin [under Victoria's control] a move that might lead to closer union. Griffith drafted the Federal Council Bill and revised it after committee discussion. The hostility of New South Wales and the indifference of other delegates resulted in a weak council. It was given limited legislative powers, no executive powers, and no revenue. Many of its powers were legal, reflecting Griffith's earlier frustration both as a lawyer and as attorney-general. The bill provided procedures for each colony to operate outside its own boundaries in the serving of documents [processes, judgments, extradition orders] and the arresting of offenders on British ships beyond Australasian territorial waters. More significant to most delegates were the powers in relationship to the Pacific islands; prevention of the influx of criminals [aimed at the French convicts escaping from New Caledonia]; and fisheries in Australasian waters beyond territorial limits. No colony was to surrender any right of independent action on any of these matters. Other matters such as "general defences" and quarantine could be referred to the council.

This conference was a brief interlude: Griffith returned on 10 December to Brisbane and its domestic concerns. In the month before parliament met, he spent most days, except for Christmas and New Year, at his offices, and most nights at home studying governmental papers and preparing estimates and bills. Cabinet meetings were held on 14 and 22 November, on 12 and 27 December, and on 2, 4, 7, 8 (on board the Kate) and 9 January. Executive Council met on 14 and 28 December, as well as 3 and 10 January. He was obtaining first-hand information for his rule, inspecting the Immigration Department on 19 November and the Brisbane hospital on 26 December. In line with his pledges that his ministry would not be Brisbane-centred, he visited Mackay with Governor Musgrave from 17 to 23 December. As ever, all this activity in Brisbane, Sydney and Mackay was combined with his private legal practice.

In the next five years, Griffith's working week often exceeded eighty hours. One of his strengths as a politician was his detailed administrative work. In contrast to McLlwraith's brief minutes on despatches, Griffith frequently wrote at length after close study of the issues. He had begun this practice in his earlier ministerial positions, and continued it as he tried to
One of Griffith's administrative minutes (written vertically).
(Courtesy of the Queensland State Archives.)
control all actions of his government, writing thousands of minutes in his thin, spidery handwriting, usually in mauve ink. Matters that presented neither major problems nor marked new principle were often minuted by Griffith.

Griffith was unwilling to delegate, and his public service was small. The total of 150 public servants in 1861 was not to be doubled until 1900. Few of these were decision makers or even handlers of documents.

Although Griffith was accused of patronage, a royal commission on the civil service that reported in 1889, after the five years of his administration, found “overwhelming evidence” against the current method of appointment and promotion but produced no direct evidence against Griffith.

Griffith had criticised McIlwraith for making political appointments, condemning particularly the poor quality of justices of the peace. In a public speech on 6 February 1884, Griffith claimed the list of magistrates had included some of “the greatest ruffians in Australia”. When one indignant justice of the peace from Laura sought to resign, Griffith assured him he had said the list “had contained some of the most notorious ruffians in their districts but that so far as I was aware there were none of that character now on the Commission”. He gave this justice the option of resigning. The man apologised, as he had not realised that Griffith meant to refer to those he had struck off the list, “without any desire for a restoration of the honour”, and agreed to remain as a magistrate.

Griffith was aware of the difficulties besetting isolated justices on the vast frontier of Queensland. For example, a justice of the peace who was a station owner at Boondooin, near Adavale, urged in September and December 1884 the appointment of a police magistrate to the district, as “breaches of the law have greatly increased”. The town had only one sergeant and two constables, and the nearest police magistrates were 150 miles away, at Roma and Thargomindah. As a justice he had sat with another property owner to hear twenty-six summonses under the Masters and Servants Act, on twenty-five of whom fines had been imposed: “these men all refused to pay, not because they had no means to do so, but they appeared from the first to stand out and intimidate the Bench — Police and Government”. Four or five had been sent to Roma gaol, but the other twenty had to be detained by the three policemen — “they were boarded at the Great Western Hotel, Adavale, that has become the joke of all the colonies”. He wanted to be dismissed: “I find it has occupied me eighteen days travelling 450 miles at my own expense in magisterial duties. Being called ‘Old Pig’ and hooted at by town loafers in the main street and having no protection for myself I fail to see were [sic] the honour comes in being one of Her Majesty’s Justices of the Peace”. Griffith could only piously: “I hope notwithstanding the difficulties of the position that Mr Yeates will continue to serve the country in the administration of justice until arrangements can be made for the appointment of a P.M.”.

The charge of nepotism is hardly borne out by the appointment of his father to the Brisbane Hospitals’ Committee of Management in 1878, while Douglas was premier, since Edward Griffith had held a similar position in Maitland, and Premier McIlwraith had appointed him in 1888 to be one of two honorary commissioners to the Melbourne Centennial Exhibition. Griffith acquiesced in the appointment of his brother as chairman of the
Brisbane Licensing Authority in 1888, but the shortage of suitable candidates in Brisbane can be seen as mitigating the accusation of nepotism. Griffith countered charges of political patronage by accusing his opponents of committing the same offence. Early in 1884 the Legislative Council rejected, by a majority of two, his attempt to repeal an act allowing the immigration of Indian coolies. Griffith alleged improper appointments by McIlwraith on 19 September 1883 when his electoral defeat seemed certain. The appointments had been approved by Palmer as acting administrator, and Griffith alleged bias. Palmer was McIlwraith's father-in-law and a former member of his party. To ensure there was no suspicion of partiality, Griffith suggested to the Colonial Office that the chief justice, not the president of the Legislative Council, should in future be the acting administrator. The Colonial Office saw them as "a choice of evils": both were "chosen from among the political supporters of the Premier in office when the vacancy occurs".

Griffith consistently supported the dominance of the Legislative Assembly over the Legislative Council. After a clash between the two Houses in 1885, he was to gain the support of the Privy Council, which agreed that their powers were not co-ordinate, especially in amending money bills.

Griffith had come to power in 1883 promising changes in the economic policies pursued by McIlwraith. He had argued that the conservatives were forcing Queensland's development at too rapid a pace, based on unlimited access to land by the pastoral, sugar and mining industries. Griffith and his Liberals favoured a slower rate of land disposal so that small farmers should have an opportunity to take up land. Sugar planters should not become a privileged class akin to the cotton magnates of the United States of America, and should not rely on coloured labour. Mining companies should be compelled by the state to give greater benefits to their employees. Land-grant railways were discouraged — railways should rather follow settlement. More positively, Griffith, supported by town liberals, encouraged small industries in the towns.

The first major change in policy came with his lands bill of 1884. He entrusted the drafting of this measure to C. B. Dutton, who stated the intention of the legislation as being

to prevent the monopoly of land by a few, to ensure the gradual extension of occupancy by holders of moderate areas, to bring the occupancy of moderate areas within the reach of men with small capital, and to secure to every member of the community a participation in some portion of the increasing value of land — to which as a worker he must have contributed — the basis of all previous land legislation, alienation is now abolished, and that of leasing as hereinafter set forth, is substituted.

The plan was for the government to resume in certain areas part of the lands previously alienated, which would then be opened for selection. The acreage of land available for each person was not to exceed 20,000 for pastoral, 960 for agricultural, 5 for suburban and 1 for town land. The leases were to be for thirty years for pastoral and suburban, fifty for agricultural and town lands. Residence and improvement conditions were to be strictly applied to all land-users. An addition to the original memorandum covered pastoral leasing of scrub lands.
The scheme was influenced by the ideas of Henry George, whose *Progress and Poverty* had been published in the United States five years earlier and serialised in Australia the same year. George’s argument that the best use of capital was to make it available for labour on the land, not for the mere accumulation of land, explains the insistence on improvements. A land board replaced the minister for lands, supposedly to avoid political influence on the administration of the act.

The land bill led to a further rift between Griffith and the Brisbane *Courier*. Griffith had hoped for the support of this paper, despite one of its owners being his critic, Buzacott. The land bill, moreover, faced strong press, pastoralist and Nationalist opposition. Every clause was minutely examined in the assembly, and it took fifty sitting days at the committee stage. Then the council, dominated by landowners, attacked the bill. Eventually, in December 1884, it became law, by then being associated with the Liberals’ approval of a loan of ten million pounds for public works.

Leasehold was to remain the central principle of land administration, along with survey before selection. In 1885 the act was amended to permit selection before survey in certain specified areas. A further amendment in 1886 extended the time limits for pastoral land to be brought under the 1884 act, varied the way of determining improvements on unsurveyed land and modified the terms for agricultural farmers.

This land legislation did not significantly alter the balance of the Queensland economy. The pastoral industry remained dominant in the colony, earning most of the export income. Agricultural production remained relatively unimportant, with sugar being the only significant agricultural export. Overall, Griffith and Dutton did not succeed in preventing what they had called “the monopoly of land by a few”.

Griffith sought the votes of miners, but did not encourage government mines. In 1886 he passed acts that provided for mining in reserves and for government resumption of goldmining lands for homestead leases. The only other mining act dealt with coalmining, amending the 1882 Mineral Lands Act by providing for licences to search for coal on Crown lands.

Griffith continued to act as a barrister for private mining companies. In March 1886, he appeared for Frederick Morgan and T. S. Hall, the occupiers of the mine generally known as Mount Morgan, in the Crocodile Creek goldfield. Mining in this area twenty miles inland from Rockhampton had begun in the 1860s; part of the dispute was whether the goldfield had been declared in 1866 or 1883. The case was to establish the legality of leases issued to Morgan and Hall in 1884, and high stakes were at risk. The plaintiffs — twenty men each holding a miner’s right — admitted Morgan’s and Hall’s lease, but alleged that their title was bad because of non-conformity with the regulations. Joined as defendant was William Knox D’Arcy, who had taken possession of the mines. Griffith described the plaintiffs’ claim as “absurd”, arguing that “if this action will lie any man who has a flaw in his title is liable to an action by any holder of a miner’s right”. The court found for the defendants.

This victory was repeated when Harding, on the same day, refused remedies to twenty other holders of miners’ rights. The same counsel had appeared, with Griffith stating he had “nothing to add to my former argument”.
Mount Morgan was the subject of another action in June 1886, in which Griffith acted for Hall and Pattison, as the owners of the Mount Morgan freehold. A miner alleged that Hall’s and Pattison’s freehold land had been wrongly surveyed, and was actually Crown land, which they and the warden denied. Griffith’s main contention was that, whether the warden was regarded as a ministerial officer or as one exercising judicial functions, he should have rejected the miner’s claim to registration because its dimensions were outside the legal limits set under the 1874 Goldfields Act. This argument was accepted.

The fourth Mount Morgan case was a repetition of the first three, with one plaintiff, the holder of one miner’s right, alleging he was entitled to four claims within the land leased to Morgan, Hall and Pattison, and occupied by D’Arcy. Griffith appearing for the owners argued, following a previous case, that the plaintiff’s claims were illegal, being far larger than his entitlement. Harding agreed that his judgment had to follow the precedent, so found against the plaintiff, as did Mein.

In the sugar industry, Griffith proposed state assistance for central mills as one way of breaking the monopoly of the large planters and companies. When he announced his scheme to supply government money for the construction of mills, considerable local interest was shown by small sugar growers. Thus the Herbert River Farmers Association in 1885 requested a loan of £15,000 to aid their efforts to build a “Central Public Sugar Factory” that was estimated to cost £30,000. A representative of a group of farmers in the Walla scrub near Gin Gin wrote for information, believing that their area was “an admirable locality for testing the proposed scheme”; they owned more than 8,000 acres of rich scrub land, of which 1,200 cleared acres would be suitable for sugar.

The established planters and associated business interests did not welcome Griffith’s intervention. Thus J. E. M. Vincent wrote indignantly from Melbourne seeking compensation of £8,000 from the Queensland government. He claimed that Griffith’s loan of £25,000 to sugar farmers at Eton, near Mackay, for a central factory had prejudiced his importation of machinery for a private mill. He had written to Griffith giving details of his plans to build refineries, which he claimed would bring more white growers into the industry. Griffith had acknowledged his letter, but after the local magistrate, Hodgkinson, had recommended the area for a central mill, had advanced the money, disregarding Vincent’s plans.

Griffith had to devote much time to the problems of Kanaka labour, but he encouraged all experiments for replacing canecutters with machinery. For instance, Moreton invited an Irish engineer to call on him when he claimed to have designed a harvester that would make it possible for sugar to be cut for less than sixpence per ton, using white labour. This compared well to the current cost of two shillings and sixpence per ton with the cheapest Kanaka labour. It was, however, to be many summers before machinery was to replace either black or white canecutters.

Soon after taking office, Griffith fulfilled his electoral promise to end McLlwraith’s 1882 proposals to introduce Indian labourers by informing Indian governments that McLlwraith’s negotiations were ended. On the Kanaka question, Griffith had consistently attacked the McLlwraith government, which had itself become aware of the increasing costs of the traffic.
As soon as he became premier, Griffith wanted facts: he inspected the Brisbane Immigration Department, and ordered investigations of the Kanaka hospital at Mackay and of the Townsville Immigration Department. He was not an abolitionist, but he wanted tighter government control.

As early as 22 November, Griffith instructed inspectors to inform islanders that they would not be allowed to take firearms back to their islands, and he began to prepare a bill to prohibit the sale of firearms to islanders. In January, Griffith issued a proclamation prohibiting the "exportation to any island in the Pacific Ocean, not being in Her Majesty's dominions, of all arms and ammunition". He endeavoured to have similar proclamations made by the other eastern Australian colonies. The Victorian government doubted its power to issue such a proclamation, but promised to refuse licences to any ship carrying more arms than were necessary for its protection. When Mackay storekeepers petitioned for compensation for the loss of sales of arms and ammunition, Griffith recommended no action.

The Griffith administration investigated abuses on several voyages, including those of the Albert Vittery, Ceara, Fanny, and — worst of all — the Hopeful.

The Albert Vittery case broke just before Griffith took office, when the government agent and a seaman of this vessel were arrested for the murder of two islanders. At the trial in March 1884, the seaman was found guilty, although it was established that he was obeying the orders of superiors. The government agent was acquitted. When asked whether the captain would be allowed to command a labour vessel, Griffith minuted, "certainly not".

After an inquiry at Townsville into the Ceara, the kidnapping of a girl after the murder of her father in the New Hebrides was admitted. The government agent of the Ceara was not employed again, Griffith personally interviewing him to explain exactly why.

An inquiry on 14 December 1883 into the killing of the interpreter of the Fanny opened up the worst case, that of the Hopeful: the Fanny attack had been intended as revenge for killings by the crew of the Hopeful during its voyage in 1883. In a reprimand to public servants for not having investigated this incident, written on 6 February 1884, Griffith referred for the first time to the possibility of abolition: "If these precautions are unavailing I think that it will be imperative for the honour of the Colony to refuse to grant any licences to labour vessels". In February 1884, he instructed all government agents that no recruiting was to be allowed from New Guinea. [He had accused Mcllwraith of annexing New Guinea in 1883 for the purposes of recruiting labour]. His expressed reasons for forbidding recruiting there were "the great mortality amongst natives" from that area, and grave doubts of their ability to "thoroughly understand the nature of their engagements".

By March 1884, Griffith's Pacific Island Labourers Amendment Bill was ready. It had two main objectives. The first was to diminish competition with white workers by restricting Pacific Islanders to field labour on sugar plantations. Any person employing a Polynesian in another capacity — for instance as a "groom or domestic servant" — was compelled to dismiss
that islander. Griffith sought working class votes by this measure, mentioning the disadvantages of a "class or caste of persons entirely served by Polynesians in their households" since a "large majority of the people of this colony strongly object to the introduction of such lines of distinction between classes". The second objective was better to control recruitment. Every intending master of a labour vessel had to apply for a licence, which was to be checked by an inspector at the intended port of departure, and by the immigration agent at Brisbane. A government agent was to accompany every ship granted a licence; the ship had to be specially distinguishable (painted white with an appropriate black streak, and to carry a black ball); it had to meet accommodation requirements and to carry prescribed medical and other equipment. No firearms were to be taken aboard except for protection of the ship's boats. No spirits were to be given to any islander. Instructions for the government agents set out the limitations on recruiting, and the requirements for returning islanders, usually to their own village. The agent had to send his log to an inspector after each voyage.

The peace of the 1883 Christmas races in Mackay had been disturbed by a fight between Europeans and Pacific Islanders, in which two people were killed and four others seriously injured. Griffith received a manifesto signed by 138 Mackay residents "expressing their indignation" at a two months' sentence imposed on a white man for a "slight assault with the idea of public safety". The Polynesian inspector had given evidence that the man had struck a Kanaka with a piece of wood two and a half feet long and one and a half inches in diameter. Griffith minuted "no action". He merely initialled a later report on the affray which tried to put most of the blame on the presence of unemployed Kanakas whose contracts had expired, and which suggested as a remedy more regular shipping.

When a Redland Bay planter neglected to provide proper medical attention for a Polynesian girl who had been burned, and she subsequently died, the immigration agent Ralph Gore had bluntly said that the planter's "callous indifference to the sufferings of others" made him "utterly unfit" to employ islanders. Griffith approved that he be banned from employing Kanakas. The provision of adequate medical care had long been a contentious issue. The 1880 act provided for the formation of central hospitals (clause 27) funded by a levy from each planter (clause 28). The Mulgrave Planters' and Farmers' Association of Bundaberg had proposed accommodation on each plantation and exemption from the levy. Neither McLwraith nor Griffith would agree. Likewise when Mackay planters wished to pay Kanakas only at the end of their three years' service, Griffith simply noted, "the law must be obeyed".

At the same time Griffith argued that it was impossible for Queensland to send those accused of crimes for trial to Fiji, the centre of the Western Pacific High Commission, or to other British islands.

After the captain of the Stanley, Davies, and its government agent, W. A. McMurdo, had been arrested following trouble in the Laughlan Islands involving a German trader, Griffith informed the Colonial Office:

This Government is deeply sensible of the scandal that has been brought upon this Colony and the British flag by the want of due supervision of the Pacific labour trade, and is firmly resolved that if their endeavours to remove the cause
of the scandal prove ineffectual no alternative will be left but to put an end to the trade itself by refusing to issue any further licences.\(^45\)

Griffith had thus repeated his February warning of possible abolition.

Police court proceedings had been begun on 31 March against McMurdo and Davies, but before their conclusion, warrants were issued from the High Commission's court in Suva, Fiji, for their arrest. Lilley, the chief justice, decided that the men could be sent to Fiji under the 1881 Fugitive Offenders Act. On 19 June, the *Raven* left for Fiji with the prisoners, sailing via the Laughlan Islands. In Suva they were each sentenced to three months' imprisonment.

The administrator, Thurston, exercised his prerogative and released the prisoners. His reasons for clemency reflected on Queensland, as McMurdo believed he was

simply performing a duty which, if not actually approved, would not be disapproved by his official superiors, and it is, I regret to say, almost equally evident that he was not without reasons for this belief ... the conclusion was not unnaturally arrived at that violence to natives was of little consequence by comparison with the procurement of "recruits", or with their recovery in the event of their escape.

Thurston acknowledged that the new Griffith government in Queensland "would deal severely with a case of this kind". He gave the McLlwraith government the benefit of the doubt: "it must be presumed in favour of their predecessors that they were never made aware of the extraordinary facts revealed in McMurdo's previous journals, and did not therefore give either a direct or tacit sanction to the inaction of the Immigration Department".\(^46\)

Thurston cited other instances in which he was not satisfied, including a voyage of the *Ceara*. Griffith had earlier set up an inquiry which had found no evidence that the ship had recruited in New Guinea or its adjacent islands.\(^47\) In the Queensland Supreme Court in June, two crew members of the *Forest King* had been sentenced to three years' imprisonment, the first to be spent in irons. Griffith had the agent dismissed and the captain debarred from the labour trade, but in October the Queensland Vice-Admiralty Court released the *Forest King* from custody on the ground of insufficient evidence to find it guilty of decoying. The ship had been arrested by Lieutenant Commander Marx of the HMS *Swinger*, and he was ordered to pay costs.\(^48\) In October the captain of the *Oriel* was deprived of his licence for the labour trade, following complaints of supplying arms to islanders.\(^49\) Captain Wawn of the *Heath* had also lost his licence after one of his crewmen shot a native of Normanby Island, and T. R. Y. Thomson, the government agent, was closely questioned on his report of the shooting.\(^50\) In December in the Supreme Court, the captain of the *Ethel* was acquitted, and the government agent found guilty, of kidnapping a boy.\(^51\)

The labour trade problem was brought to a head by the *Hopeful* case. Its officer, Neil McNeil, had shot a native who had struck a crewman with a paddle, and the boatswain, Bernard Williams, had shot a boy swimming in the water. Both were sentenced to death for murder. The captain, L. Shaw, and the government agent, H. Schofield, were sentenced to life imprisonment, and five others were sentenced to shorter prison terms. These were by far the harshest sentences ever imposed.
Thousands protested at a public meeting on 10 December. Kanakas were regarded as inferior, almost subhuman, so that these crimes differed from the murder of white men: one speaker ‘never knew a black race yet which was not treacherous from infancy up to grey-headedness’, and another thought the islanders were “a conniving, cunning, smooth-tongued lot”. A common claim was that the two accused should not be made scapegoats for Queensland’s past policy: “from the Governor down they [Queenslanders] were all guilty of the crime”, and similar actions had been “winked at in the past”. At the meeting, only one person dissented and he was howled down.

To a deputation urging mitigation of the death sentences, Griffith said “the atrocities on the voyage of the Hopeful were more and worse than all the others. He had never heard of such a voyage of murderous atrocity”. He read them the reports from the police magistrate at Cooktown, which alleged that over forty natives had been killed, and from Commander Erskine, which revealed a terrible story of more kidnappings on the same voyage. Griffith repeated, “he should be sorry to think that custom had sanctioned anything like the Hopeful case. If he thought so, he would never sign another licence”, to which some of the deputation, perhaps forgetting their role, responded with “hear, hear”.

The Executive Council rejected commutation on 16 December 1884 by a vote of four to three, with Griffith voting with the majority. Twenty-two petitions were signed within a week: eighteen from the country, and four from Brisbane. McIlwraith became a leader of the abolitionists and led a second deputation, accompanied by a newspaper reporter, to Griffith’s government. Subsequent reports described the emotionalism of the delegates.

The Executive Council met again, two days before Christmas, to reconsider the sentences. Governor Musgrave in the chair condemned the view that the life of a black human being was not as sacred as that of a white man, but he noted the numerous petitions and said he would be prepared to sign a commutation to a life sentence, with the first five years in irons. The governor’s waverings, the political realities, the emotional atmosphere, and the doubts raised by the protests were sufficient to sway two votes — those of Dickson and Miles who joined the three (Dutton, Sheridan and Rutledge) who earlier had voted for commutation. Only Mein and Griffith continued to oppose commutation. Musgrave hoped the whole debate would give Griffith and his colleagues sufficient courage to end the trade altogether, although realising that “unfortunately political considerations and party expediency may deter them”.

Griffith appointed a royal commission “to make enquiries into the circumstances under which natives of New Guinea had been introduced into Queensland”. Its report in May 1885 condemned the recruiting methods used on most of the voyages. Griffith ordered the government agents involved to resign, and the men to be returned. He was definite in his instructions: “take no notice of protests. Remove the men and use force if necessary to overcome resistance”. After protest, over £20,000 was paid in compensation to employers deprived of labour.

The Immigration Department, at Griffith’s request, prepared statistics on islander labourers. The number of Kanakas in the five principal districts
at 30 June 1884 were Mackay (3,826), Bundaberg (2,188), Ingham (1,779), Maryborough (1,346) and Townsville (918); a total of 10,057. The total had declined to 9,786 by 31 December 1884 and to 9,150 by 30 June 1885. The death rate had varied from 7.84 per cent to 2.35 per cent for the six-month period. He obtained further details of all Kanaka arrivals, departures and deaths from 1868 onwards (35,209 had come in; 16,584 had left; and 5,442 had died). At the end of 1884, Queensland had fifteen licensed vessels (average tonnage 145) with an average carrying capacity of 108 islanders; fifteen government agents had been approved (seven permanent and eight supernumeraries), from whom full reports of their activities were required.54

In 1884 New Guinea was formally divided between Holland, Germany and Great Britain, and the Solomons between Germany and Great Britain. Griffith's attempts to prohibit recruiting in the islands to the north now depended on Germany's cooperation. In July 1885 he heard "from a reliable source" that certain planters were planning to recruit in the islands recently annexed by Germany. As these islands were now under European control, the British Kidnapping and Pacific Island Labour Acts no longer applied, so he wrote to the British government requesting that it contact the German government. He anticipated its cooperation on humanitarian and realistic grounds: "the physical unfitness of these islanders for service in Queensland became some time since so apparent that further recruiting of them was absolutely prohibited".55 A German proclamation prohibiting recruiting was eventually published in the Queensland Government Gazette and met Griffith's desired effect, ending the planters' scheme.

In Queensland, inspections became more regular. When an islander died on "Cordelia Vale" plantation on the Herbert River, a magisterial inquiry was held. The doctor considered the cause of death to be bronchial catarrh, which should have been treated beforehand. The planter was fined ten pounds for not providing proper medical attention.56

As prosecutions increased, so did the reports of abuses. An example of a Yatala justice of the peace who incurred unpopularity by reporting the abuse of islanders' children, was paralleled by an anonymous "resident on the Burdekin". who wrote to Griffith to complain of cruelty by a named overseer (Lewis Hoey), who had previously been heavily fined for cutting a boy's eye out with a whip. After inquiry, Griffith minuted; "If similar conduct to that disclosed in these depositions should be repeated no islanders will be allowed to be recruited for or transferred to this Plantation while Mr Hoey is in charge. Inform owners".57

In Bundaberg, Carl Lang and others sued planters, their reward being half the fines imposed. In retaliation, Lang was sued by a planter for trespass while seeking evidence for a further prosecution, claiming to be "acting under orders from the Government". Among the magistrates, thirteen of whom insisted on sitting, there were five prominent members of the Liberal Association, four sugar planters, and four "gentlemen having (so far as is generally understood) no interest whatever in sugar planting". Lang was found guilty by a vote of seven to six, fined five pounds and imprisoned for fourteen days. As he was unable to pay the fine, he was in gaol when his next case against a planter was called. The Liberal Association was reported to have disowned Lang's activities. The police magis-
trate who had voted against the verdict on Lang sent a long report of his difficulties in running the case, in which he admitted that the bench had been packed by both sides. He found the situation very difficult, especially as he knew that Lang had a very bad character, as shown by the record of the Maryborough Police Court. Griffith, who thought the magistrate had "acted with great discretion", ordered a remission of Lang's fine. Six of the seven majority magistrates wrote complaining at this remission.\(^{58}\)

The difficulties of applying the law were again apparent in a pack rape case at Mackay. The assistant inspector of Pacific Islanders, C. A. Forster, recommended action against the seven islanders responsible, but the inspector, A. R. McDonald, suggested merely "reproving and cautioning the islanders". Griffith directed the offenders to be prosecuted. When the seven men were discharged because the police had not obtained interpreters, Griffith required "fresh charges to be laid. Commissioner of police for report apparent neglect by Police".\(^{59}\)

Griffith eventually took action to end the entire labour traffic. In November 1885 he introduced legislation prohibiting the recruitment of Kanakas after 31 December 1890.\(^{60}\) It passed the Legislative Assembly, supported by the vote of McIlwraith, and was not defeated in the Legislative Council. The question of Kanaka labour had become linked with the northern separation movement in the agitation for the mitigation of the sentences of McNeil and Williams. From 1885 through to his departure from politics in 1893, Griffith had to face the latter problem.

The planters maintained pressure for the continued use of islander labour. For instance, Walter Adams, McIlwraith's successor for the seat of Mulgrave, asked that maize be classified as a semi-tropical crop, a request which Griffith refused.\(^{61}\)

Throughout his premiership, from 1883 to 1888, Griffith was intimately involved in detailed decisions. This was illustrated very plainly by the exactitude of his minute of 16 April 1888: "If the height between decks is 6 ft. 6 in. one passenger may be taken for every 78 cubic feet inclusive of Berths. I think the same rule should be applied if the height exceeds 6 ft. 6 in. and that the bulk of the berths should not be deducted in this case either".\(^{62}\) An important principle was involved — humane conditions for recruits — but it is surprising that a premier was deciding such minute details. Much of the load could not be shared, however, because he was still dissatisfied with his staff. As chief clerk, A. Woodward was more efficient and more in sympathy with his views than G. R. Gore had been, but troubles continued at the lower levels of the department: a paper war between C. A. Forster, who had been moved from Mackay to Ingham, and Woodward, who wrote of Forster's "obstinate obtusiveness", "fussiness" and "endless diatribes", led Griffith to write, exasperatedly.

Inform Mr Forster that I have considered his complaints and that having now for a considerable period had the duty of perusing much of his correspondence I do not wonder at the irritation displayed by Mr Woodward. I have previously had occasion to caution Mr Forster as to his relations with his official superior and I have now to add that unless he can conduct the business of his office and his correspondence in a more concrete and intelligible manner I shall have no alternative but to recommend that he be relieved from his duties."\(^{61}\)
When Griffith resigned in June 1888, he knew that his tight controls would remain. He had succeeded partly because his views were in line with those of others outside Queensland, and because of the extent of the outrages that had been uncovered in the voyages of 1883. He had survived the emotional upheavals of 1884, and it seemed clear that McLlwraith could make few changes when he regained power. Yet Griffith had not solved the problem of the sugar industry.

Pacific Islanders had been in Queensland when Griffith became premier. His efforts to control them had reduced their numbers, and the planters and other employers of labourers had sought cheap replacements. He had stopped the plans of his predecessor for Indian migration, and refused to make the government responsible for other private arrangements. Drysdale, on the Burdekin, imported twenty-three men from Singapore, but was disappointed. Calling them "Arabs" rather than "Malays", he refused to employ them. The police magistrate at Townsville reported them to be "starving and destitute", and sought advice. Griffith asked what Drysdale's agent proposed to do, but he denied responsibility. In May 1884, twenty Malays were sentenced by the bench in Ingham. Griffith refused to decide where they should be confined.64

In November 1883, Griffith investigated a plan to obtain cheap Chinese labour for the sugar plantations. A Hong Kong firm had been encouraged by Sir George Bowen, then governor of Hong Kong and previously of Queensland, and in October 1883 a ship was reported to be boarding 144 Chinese at Hong Kong for the sugar town of Mackay. The harbour master at Hong Kong reported that the recruits belonged to the "very lowest class of Chinese" and had contracted to work for three years at low wages. Griffith asked the Mackay immigration agent to report. They were free to contract: some had insisted on higher wages; some had refused to enter into any engagements. The planters, who had paid both the passage money and poll tax [ten pounds a head], had hoped to obtain cheap indentured labour, but the experiment failed. Instructions were sent to Hong Kong to suspend further shipments.

In November 1884, Hoffnung and Company presented a plan to bring Japanese to Queensland as labourers for the sugar industry. Griffith's memorandum of 26 November stated that the proposal had been carefully considered by the government — most likely mainly by himself — and that the government was not in favour. In the following year, Swallow and Derham of "Hambledon" sugar estate proposed introducing Japanese, and asked for the government's views. Griffith minuted:

there is at present no law in force prohibiting the introduction of Japanese subjects. I am not in a position to give any definite promise on behalf of the Govt. If at any future time the introduction of Japanese should prove injurious to the welfare of the Colony I have no doubt that restrictions on their introduction would be imposed by Parliament.66

Griffith likewise avoided comment on the importation of Singhalese labourers.

A contractor and labour agent wrote from Palmerston in April 1888 with an offer to supply coolies for the building of fortifications at Thursday
Island. Griffith minuted on 2 May 1888 that "this Govt does not employ Asiatic labour".67

For European migrants, Griffith’s policy differed little from that of McIlwraith, except that his increasing unease about coloured labour was to lead to attempts to obtain more European labourers. Griffith seemed less interested than McIlwraith in wealthy immigrants who were able to afford large tracts of land, yet there was so much unsold land in Queensland that intending landowners, both rich and poor, could be accommodated, especially if they were prepared to go to the limits of settlement. Both McIlwraith and Griffith knew that migrants were required more for their labour than for their wealth.

Immigration had been one of the subjects first considered by the new Queensland parliament, which in 1860 had introduced a system of land orders to encourage immigration. McIlwraith passed a consolidating act in 1882 that provided for the appointment of agents-general to oversee selection of immigrants; the creation of immigration depots for their reception; the issue of rail passes to place of employment; and the creation of an immigration board to enforce the regulations. Employers wishing to engage “any mechanic, labourer or servant” in Europe could apply to the government for assisted passages, as could relatives. Free passages were available to female domestic servants and “such other emigrants... as may from time to time be specially required in the colony”. All assisted immigrants had to undertake to stay in Queensland for at least twelve months.

Griffith personally supervised the administration of this act.68 For instance, he asked for details of a man who had been arrested when leaving Brisbane because he was thought to be leaving within the prohibited period. He found that the migrant had spent two months in Mackay before coming to Brisbane, and that “there is therefore no ground for supposing that he came to the colony intending to leave it”. He consequently advised this prosecution should be dropped. He continued to exercise personal control over this as over other subjects.69

Following a protest meeting by the unemployed against continued immigration in November 1883, Griffith agreed that some migrants were unsuitable. He commented to his London agent-general that sixty-eight persons who had arrived that month in the Zamora did not “appear a desirable lot for a new country. Some of them look weak, have large families and as a great number of them come from Manchester and other large manufacturing towns, and with no knowledge of outdoor work they will... find great difficulty in procuring a living”.70 A German living in Toowoomba offered to go to Germany as an immigration agent to obtain suitable settlers.71

Northern European migrants were more welcome than were southerners, but in 1884 Griffith showed his willingness to consider Italians. In June 1883 a Roman Catholic priest, Monseigneur Paul Fortini of Cooktown, had applied to bring Italians from Calabria to work as farmers (to grow olives and grapes), stonemasons, carpenters, and so on.72 When the Mulgrave Agricultural and Protection Society asked how they could obtain indentured European labourers, Griffith required them to make their own arrangement to recruit labour, the government being prepared then to arrange approval for passage.73 Nothing came of this proposal.
Griffith read the reports of each migrant ship. He regretted that the Lilithgowshire had defective accommodation and ventilation; that the Zamora had been overcrowded; that a complaint against the Duke of Devonshire needed investigation. Similarly he checked complaints about the immigration depots. After press criticism of conditions at the Brisbane depot, Griffith directed: "W.C. accommodation to be at once put right. Arrangements to be made for securing privacy in married peoples' quarters". In 1885 a new depot was built at Kangaroo Point to meet this problem and, following complaints about the condition of the Rockhampton depot, money was voted for a new building.

From the end of 1884, the Immigration Office each week compiled a "return of state of labour market", and attempts were made to meet the needs revealed by such reports. Griffith sent George Randall on a tour of the north of Queensland to investigate demands for migrants. He reported that he was sure the majority of Queenslanders accepted that white men could work in the tropics. His long report provided the basis for future governmental action. He favoured family immigration and small-scale family farms with a central mill serving a number of farms. Griffith sent Randall as immigration lecturer to Great Britain, and A. R. H. Pietzcker to Germany and other European countries.

In July 1885, Mackay planters asked for 200 young men, to whom they were prepared to pay fifteen shillings a week. This rate of pay had not attracted recent migrants. Griffith asked Gore how he thought the demand should be met. Gore suggested that the employers indent for labour at fifteen shillings a week (a rate he thought was "perfectly fair"), and that migrants other than nominated passengers be made to accept these terms. Griffith suggested that Mackay's labour requirements be made known on board steamers on arrival at Cooktown so that any who were willing could be landed at Townsville.

In 1884, forty-two ships carried 16,673 migrants from Britain and Europe. Only 1,592 (9.51 per cent) of these had paid the full fare. Most of the others had been selected by the agent-general — 10,941 (65.35 per cent) — with the remaining 4,209 (25.14 per cent) having been nominated in the colony. The vast majority (92.5 per cent) had arrived from Britain (57.27 per cent from England, 12.31 per cent from Scotland, and 23.02 per cent from Ireland). Of 9,535 supplying information, 2,587 (27.24 per cent) claimed to be domestic servants, while 2,368 (24.83 per cent) stated they were labourers. Specialist workers (masons, miners, shepherds, gardeners, bricklayers, sawyers, plasterers, plumbers, painters) and mechanics (engineers, wheelwrights, coopers, blacksmiths) made up less than 25 per cent of the total.

By 1886, European immigration had been organised into a pattern by Griffith's government. Most immigrants were selected by its agents, voyages to the colony were supervised by its medical agents, and the finding of suitable occupations was checked and regularly reported on by government officers throughout the colony. Problems remained in all areas, but at least Griffith was routinely informed of any difficulty.

The unfortunate were no concern of the government. A young woman who suffered sun-stroke on her voyage was treated by a doctor who reported that she was likely either to die in Queensland's heat within two
years or to end up in an asylum. He recommended that she be sent 'Home'. Griffith minuted 'I think that this is a case for private charity'. When a 'city missionary' requested a return passage for a migrant widow and her children, Griffith was unmoved: 'I do not feel justified in taking any action under the circumstances'. Similarly he refused a request from a widow who was 'absolutely destitute' for government aid to return with her children to England.79

One of the offshoots of Griffith's policies towards Pacific islanders and Asian immigrants and against cheap labour was a revival of movements to divide Queensland. On 14 January 1885, J. Ewen Davidson, a sugar planter of Mackay, and Sir J. B. Lawes petitioned for northern separation. The division between southern and northern Queensland on the question of coloured labour was given as the main reason. The Colonial Office was sympathetic: 'the present Govt are ruining one of the principal interests in the colony' for the white working man's vote in the south. It sent the petition to the Queensland governor for comment. Griffith wrote a long reply, tracing the history of the separation movements from the 1860s. He argued that separation had always been a minority movement. In 1885, it had supporters in only a few towns, notably Mackay (where the planters resented his ending of the scheme to introduce Indian labourers), Townsville and Bowen. The mining and pastoral industries opposed both cheap labour and separation. He denied that southern, Brisbane-based, administrators were neglecting the centre or the north. The Colonial Office questioned his claim that whites could work in the tropics, and referred the question of separation to its legal officers. The advice was that the power to separate had been exhausted by the creation of Queensland. A new imperial act would be necessary to create a new colony.80

The agitation continued. A Northern Separation League issued a pamphlet replying to Griffith. The Mackay planters again petitioned Governor Musgrave, alleging political frauds at elections and systematic use of patronage to reward support. Griffith appears to have been worried about the Colonial Office views on separation. His agent-general in London wrote to him about the change of government at the 1885 British elections:

If the [Colonial] Office is with us, I do not think we should take anything by the discussion [of the two planters' request] . . . there are two classes we have to look to here, immigrants and capitalists. The first we can successfully reach even tho' we admit for certain purposes coolie labour. The latter think . . . the exclusion of those labourers greatly injurious to the prosperity of Qld. Nothing you could say would move them. They are our money lenders, or greatly influence our money lenders, and cannot be moved by those facts or arguments which are so powerful in our Col. constituencies.81

Propaganda and counter-propaganda continued. The separationists reiterated their demands, stressing that they represented more than the sugar planters. The Northern Queensland Separation Council, centred in Townsville, called a meeting in London in April 1886. The agent-general defended Griffith's government: of the 60,025 electors, 50,664 (84 per cent) lived to the south of the proposed boundary (22° south latitude); of the 55 members of the Legislative Assembly, 47 (85 per cent) represented the south. Of a loan of ten million pounds raised in 1884, seven and a half had been spent in the south.
The separationists argued that the questions should not be decided by the Queensland legislature, where they would clearly be outvoted. A separation petition with 10,006 signatures was sent to England. Rutledge, Griffith’s only northern member, organised a counter-petition, which was signed by 1,442 residents from the goldfields and Townsville. In the Colonial Office, Bramston commented: “there is not so far as I can see a single signature of any prominent person, a surgeon appears to be the most distinguished among them”.

Griffith had the separationists’ petition analysed: 3,860 could not be identified as having been at any time residents of the north; 349 who could be identified had left the north; and 111 had signed two or more times. The number of genuine supporters was less than 6,000, which he calculated was less than a third of the total population of 19,807. During an extensive northern tour in May and June 1886, Griffith sought clear evidence and also tried to placate the separationists.

When Macrossan, on 26 August 1886, introduced a motion in the Queensland parliament requesting northern separation, Griffith concentrated his argument on the danger of the creation of a black colony. The motion was defeated by forty votes to nine. Nevertheless the Northern Queensland Separation Council cabled the imperial government seeking its intervention, again without results. Some separationists shifted tactics to demand, through a Queensland Provincial Council league set up in Rockhampton in mid-1886, the creation of provincial authorities with legislative powers. Griffith realised that the question of separation would be raised in London at the planned 1887 Colonial Conference.

The 1880s had seen the consolidation of his social life. On the secure bases of his family and “Merthyr”, he had developed the life of a man of property, satisfying both his vanity and his view of the dignity of his exalted position.

His intimacy with his wife, revealed in the 1881 letters to her from London, had continued throughout the 1880s. He wrote regularly whenever he was away from her, however occupied he was with public affairs. He missed her “loving face” and sincerely sent his “fondest love to my darling wife”. Their shared experiences were intensified by the crises of parenthood: all the children had measles in 1883; all had diphtheria in 1884; Percy broke his arm in 1884; Nellie was ill in 1886. Griffith was affectionate, within the limits of Victorian fatherhood, missing the children when away and invariably sending them “love and kisses”. Julia usually had chief responsibility for them, albeit aided by servants. She went south in 1880 with Eveline, leaving Griffith at home for twelve days with the other four children. The servants’ work was increased, for his life did not alter much.

It seems fair, however, to deduce that he became closer to the children as they grew out of infancy. He indulged their childhood fancies, and enjoyed their seaside holidays together, where the boys became expert sailors; he rode and fished with the family; he took them to a children’s opera in 1882 and to a school function in 1886. The children travelled with their parents as they became older. When Eveline was nine years old, she travelled south with her mother in 1880; at twelve, she and Llewellyn [then aged eleven] went south with their father to the Dixons [their in-laws] in
Julia Griffith.
(Courtesy of T.S.G. Brown.)
1883. Ten-year-old Nellie and seven-year-old Percy went with their parents to Tasmania in 1885. Schooling imposed other disruptions, albeit temporary, of the family unit for the boys were sent to boarding school. In 1886, fourteen-year-old Llewellyn and nine-year-old Percy were sent to a school at Southport, fifty miles south of Brisbane. The girls were taught privately at home before attending Brisbane Girls' Grammar School, which Eveline entered in 1884. Griffith was on the governing boards of both of Brisbane's grammar schools, and his regular attendances at their functions was related to his official position. He also went to concerts at the Catholic girls' school, All Hallows.

Griffith kept in touch with his parents, now in their last years, and made regular visits to their home. Whatever his private beliefs, he attended service at his father's church frequently. He assisted their visit to England in 1885.

His relationships with most of his siblings were close, especially with his brother Edward who had been living in Sydney since 1858. Griffith saw him on his regular trips, and Edward stayed at "Merthyr" when he came to Brisbane, as in 1886. His sisters had remained in Brisbane. Alice was married to Harry Oxley, and Lydia to Charles Lethem. Two other sisters married in the 1880s: Prissie to John Drane on 17 July 1883, and Jessie to Nathaniel Lascelles on 4 July 1884. Mary, the closest to her parents, whom she had accompanied to England, remained unmarried. Beyond his immediate family, Griffith was close to Julia's relations, regularly visiting her sisters' families, the Dixons and the Wilsons, in Sydney.

Relatives were always welcome at "Merthyr", as were his friends, and "Merthyr" itself, which he continued to adorn inside and outside, became the public symbol of Griffith as a man of property. Large formal occasions included a ball on 12 August 1881 when 180 guests kept Samuel out of bed until 3.30 a.m.; a dinner party on 28 March 1882; and a luncheon party on 10 December 1886.

Outside "Merthyr", Griffith had a busy public social life. He was close to the centre of the Government House circle: a confidant of the governor, especially of Sir Anthony Musgrave and his wife Jeanie Lucinda after 1883. He was included in most of the important social occasions of Brisbane. Typical of these were the mayor's fancy dress ball on 5 August 1886 where Griffith appeared thinly disguised as a cabinet minister, with Julia as an Egyptian, and a Government House reception on 9 April 1886 which was followed by a dinner at the officers' mess of the Queensland Defence Force. Griffith was similarly feted whenever he visited the country. He bought an ornate new carriage on 21 November 1884, its style befitting his status as premier.

All Griffith's public activities had political overtones, although some were simply social relaxation or a continuation of his previous activities. His rising status in the masonic orders, although important for political contacts, dated back to the 1860s; his work for the grammar schools similarly went back to the founding of the schools; and he had likewise been for years on the boards of the Mutual Life Assurance and the English and Scottish Association. He was on the council of the National Association, and judged fine arts at their annual Brisbane Exhibition. His attendance at sporting functions, whether cricket, football, the races or, particularly, sail-
ing, seemed to be clearly for relaxation. Yet even these could have political associations, and much of his public and private life was related to the Brisbane River, which flowed past “Merthyr” to Moreton Bay. The government vessels, especially the Kate and the Lucinda, were used constantly for public work and private relaxation. It was no exceptional idea for him to suggest later in 1891 the use of the Lucinda in Sydney as a base to revise a draft of the Australian constitution. That committee relaxed by a waterfall on the Hawkesbury River, just as Queensland political groups were pictured enjoying their meetings on vessels in Moreton Bay. Informality was part of the style of Queensland politics, and however pretentious Griffith appeared in public, the uncontrollable winds of the bay could always temper any delusions of grandeur.
The Liberal Ethos

The comfort of the individual must yield to the good of the public

Griffith

Griffith's pretensions to leadership of the Liberals were subject to the realities of his many problems. He had come to power after successfully attacking McLwraith's land grant scheme, which the liberals interpreted as an extension of the capitalists' monopolisation of land. His Liberal government had, however, to continue expenditure on railways, for "the evolution of an efficient communications and transport system [was] a vital prerequisite to balanced development." Griffith's predecessor as Liberal premier of Queensland, agreed with Griffith: "it seems to me that you need not be afraid of a large scheme — the raising of the money to carry it out must be a question of time and opportunity". Griffith refused to consider any alternative methods, and rejected proposals for modified versions of the land grant system. He told one inquirer, who claimed to represent several financial agents in London, that "the Govt. are not at present disposed to entertain any proposition of this nature" and repeated the same point to an American, who was also acting on behalf of a syndicate.

For three years, Griffith faced repeated claims for compensation from the Australian Trans-Continental Railway Syndicate, which argued that his government was bound by the contract signed on 22 December 1882 by the Queensland governor. The syndicate claimed to have spent £16,000 on the basis of the contract and argued "upon the principle of good faith" that they should not lose their expenditure, because they had acted on the inducements of the 1880 law that approved the principle of land grant railways. Parliament, however, had refused to ratify the agreement. "I am not able", Griffith told the syndicate's representative, the Earl of Denbigh, "to distinguish in principle between the expenditure incurred by your Company in order to enable them to formulate their offer and that incurred by any other body of speculative capitalists who desire to secure a concession or to purchase a property". Denbigh shifted ground to make the Queensland government's revocation of the 1880 Act the chief basis of the claim. Griffith responded vigorously: "All the world", he said, "knew that
the objectionable nature of the terms of the proposed agreement was the main ground of its rejection by the Parliament of 1883".\(^5\)

An 1885 report showed that 605 miles of railways, including private branches, had been built since November 1883, and that new work on contracts worth over half a million pounds was continuing. These new lines were scattered in various electorates: the western railway was being extended; the Logan, Kilkivan, Killarney and Brisbane Valley branches were being continued; and work had just begun on linking Stanthorpe to the New South Wales border. Petitions and counter-petitions accompanied any decision to build new lines: thus in September 1885, Herberton residents reacted strongly when Port Douglas spokesmen opposed the proposed line from Cairns to Herberton. Constant pressure came from areas wanting new lines. Griffith investigated intensively before recommending building, the clearest example being the proposed link between Cloncurry and the Gulf of Carpentaria. After sifting rival suggestions, Griffith appointed a railway surveyor to select the best route. Griffith himself visited the Gulf in May 1886 and travelled overland to Cloncurry. Eventually a line was built from Normanton, but it was diverted eastwards to Croydon, where gold had been discovered.\(^6\)

Conflicting priorities for extending railways led to disputes within the ministry, one of the main ones being between Griffith and Miles, his secretary for public works. Miles threatened to resign in August 1886 rather than support a Bowen-to-Ayr railway, but was dissuaded by Griffith.\(^7\)

Public works were financed by loans raised mainly overseas. When the Liberals floated their first loan of £2,672,000 in 1884, the treasurer (Dickson) foreshadowed more borrowing: "he held that by loan indebtedness properly directed we should afford employment and attract population".\(^8\) Griffith's proposal for the next loan, of £10,000,000, was accepted by the assembly on 20 December 1884, when it was closely interrelated with the contentious land bill and the policy of encouraging the immigration of white selectors and of opposing separation.

Political opponents, including William Coote, set out to embarrass the government with adverse publicity in the London press. Griffith and his agent-general kept a close watch, blocking their activities. Nonetheless, the Bank of England thought the time unsuitable for the loan in March 1885. William Hemmant was also advising delay, arguing that so large a loan was a political mistake. He was concerned lest Griffith's policies became indistinguishable from those of McIlwraith, and he warned Griffith that McIlwraith "depend on it, will try his old games, and join the discontented men on your side in fresh demands and you cannot keep on borrowing at such a rate for ever". Hemmant urged Griffith to consolidate his political position, believing that McIlwraith would become "sick of politics" if he were defeated again in the next elections (due in 1888). He concluded, "there is not much gratitude in politics. I only hope the recipients of the crumbs falling from the ten millions may be the exceptions to this rule".\(^9\)

Griffith went ahead in 1885 with attempts to raise further loans. Garrick again warned of the link between attitudes towards coloured labour and success in raising funds. He thought the loan had been badly timed:
as luck would have it we had an unfortunate morning. However nobody could foresee political affairs and the Bank [of England] were very firm that we ought not to delay a day. You will know by this how we were attacked I believe in every possible paper. Some will say it was by the brokers. I don't at all think so. I think it was by sugar and other opponents.  

The economy of Queensland, and more particularly the other Australian colonies, was deteriorating and Griffith desperately needed full cooperation to keep the colony solvent. Musgrave, early in 1886; was gloomy: "I fear that before the end of March the financial troubles of all or most of the Colonies will . . . render any government unwilling to enter upon fresh undertakings for considerable expense".  

These worsening conditions had a paradoxical result: an improvement in the relations between Griffith's government and the Queensland National Bank, which had been closely associated with McIlwraith as premier. The £2,672,000 loan had been raised without the Queensland National Bank's assistance, but the bank's representative in London, E. R. Drury, suggested on 26 February 1886 that the Griffith government should immediately float a loan for £1,500,000, as government securities were fetching their highest price (£105.10.0). He argued that the "new loan could go at a premium. Suggests early withdrawal of funds with other banks. Delay till June might be disastrous for loan prospects. Carpe diem!" Griffith did not delay, and the loan was successfully filled.

Griffith had inherited several problems when he took office. One was the continuing presence of Chinese. While attorney-general, he had supported the limitation of their immigration, drafting the restrictive 1877 act. The number of new arrivals dropped from 7,460 in 1877 to only 481 in 1879. In 1883, however, 2,951 arrived, although Griffith had stopped an attempt to bring in more as labourers for the sugar plantations. He moved to make their entry more difficult. In March 1884, the 1877 act was amended: ships could not carry more than one Chinese to every fifty of its tons (instead of one to ten); the poll tax was increased to thirty pounds from ten, and the penalty for attempting to enter illegally was also raised to thirty pounds. The provision for repaying poll-tax to Chinese of good behaviour was repealed. Arrivals dropped to 1,497 in 1884, and 679 in 1885. Griffith also sought the cooperation of the other colonies in restricting immigration.  

Although opposed to increased immigration, he tried to ensure justice for those within the colony. Thus he approved a Bundaberg magistrate fining a European for assaulting Chinese and warning that future assaults could lead to long-term imprisonment. He sought full details of racial clashes, and was critical when information was withheld, as in a Croydon incident: "the carelessness or inaccuracy shown . . . might have seriously misled the Govt".

Griffith inherited the problems of relationships with Aboriginals. The registrar-general estimated in 1886 that 11,906 Aboriginals lived in Queensland, most of them on the fringes of European occupation [2,640 in the Cardwell census district; 2,565 in Diamantina; and 2,000 in Palmer]. Their proportion to Queensland's total population was about one to twenty.

Griffith had been concerned in the question of acceptance of Aboriginal
evidence in legal cases, and he had supported the 1876 amendment, of the Oaths Act, which provided for witnesses making a declaration instead of swearing an oath. This system had not worked well, and his government changed the law in 1884. Judges were given the power to "declare in what manner" the evidence of a person on whom an oath would have no binding effect should be taken. The only requirement was that the witness had to understand "that he will be liable to punishment if his evidence" were untruthful. In 1884, the Native Labourers Protection Act was passed, supplementing the 1881 Pearl Shell and Beche-de-Mer Fishery Act, the first to provide for written agreements for native labour.

Griffith realised it would be difficult for this act to achieve its protective purpose. Douglas returned seventeen Aboriginals to Australia from Thursday Island but was unable to prove that they had been "kidnapped" by South Sea Islanders. He was sure his action would limit the "scandalous" traffic and help reduce the hostility of Australian Aboriginals. Griffith "entirely approved" this action. As ever, he believed in the rule of law and would claim that the mere existence of the statute was an improvement on the previous lack of regulations. When the secretary of the New Guinea special commissioner asked, semi-officially, whether it was legal to employ Queensland Aboriginals, Griffith replied in strict legal terms: "The law of Queensland can only deal with what happens in its own waters. It has not been made penal to take aborigines out of Qld waters". When a sympathetic squatter enquired if agreements between pastoralists and Aboriginals could be recognised by the government, as it would be "the means of making useful and prolonging the lives of a race that in a very short period of time will make their exit", Griffith was sympathetic, but replied, "the provisions of the Masters and Servants Act apply to Aboriginal as well as other servants".

Early in Griffith's administration, a doctor at Ravenswood pleaded for the admission of Aboriginals to the local hospital or for the paupers' relief fund to be applied to them. Following accidents, several had been "allowed to die in the bush without proper nursing because the members of the Committee of the Ravenswood Hospital refuse to admit them . . . either as in-door or as out-door patients — even when the Police have guaranteed payment for their maintenance". Griffith minuted "no action", not even contacting the hospital to check the allegations. In June 1885, when the Normanton hospital proposed a rule excluding Aboriginal or other coloured persons as inpatients, the attorney-general [Rutledge] found the rule "objectionable", but Griffith ruled, "I think it would be better to make this a bylaw or otherwise to act on it without formally passing it as a Rule of the Hospital". In June 1887, however, when the Mackay hospital committee asked whether the pauper grant should be used to aid Aboriginals, Moreton ruled that "the money is voted for the purpose of relieving the destitute and sick regardless of colour and sect".

Griffith continued the use of Aboriginals as native police under white officers. The policy of the commissioner of police, Seymour, was to use this force only "in outside, sparsely peopled districts". In 1885, the thirteen detachments of this force employed 128 Aboriginals at a cost of ten thousand pounds. Griffith was aware of some of the defects of this force, and of the faults of some of their officers. On 20 June 1884 he refused to reopen
Samuel Walker Griffith

the case of the dismissal of James Savage, a constable who had pleaded that he had shot an Aboriginal in the leg in self-defence. He claimed that two tomahawks, a nulla-nulla and a boomerang had been thrown at him before he fired.25

Following the shooting of Aboriginals at Irving Bank in October 1884, one white officer and five black troopers were arrested and charged with murder. In the gaol, Sub-Inspector Carr urged the troopers to “say nothing”, and Inspector Isley approved of Carr’s advice. Griffith was not pleased:

I much disapprove of Sub-Insp. Carr’s action. It is evident that he was not anxious to facilitate the objects of justice. An officer of justice is not justified in enticing or entrapping an accused person into making admissions of his guilt but it is no part of his duty to try to prevent him from making them.

Insp. Isley’s attitude in the matter is also unsatisfactory.

When Isley, reporting that the accused had been sent from Port Douglas to Townsville, asked: “in event of no bill being filed will you please advise me at once that I may arrange to get the boys back again they are too smart troopers for the police to lose”, Griffith rather tartly replied: “These men will under no circumstances be re-employed in the N.P. Force. I have already directed their dismissal and am surprised at this suggestion being put before me”.26

Queensland in the 1880s was still a frontier colony, and many requests for police protection reached Brisbane. At Geraldton (modern Innisfail), both the Johnstone Division Board and a public meeting asked for native police protection against robberies by Aboriginals. Griffith followed the advice of the police commissioner and sent three black trackers to assist the police sergeant. At Cooktown, a settler warned that “some of us will lose our lives as the blacks are growing bolder and more mischievous every day”, and the local Progress Association and the Cooktown Independent demanded protection from “outrages” by blacks. Griffith assured them that “the matter has for some time been receiving the attention of the Govt” and, after a full enquiry, concluded that in this case, “the Native Police have not failed in the performance of duty that may reasonably be expected from them”. A settler at “Lalla Rookh” station [on the Archer River on Cape York] sought protection and was also told that “the question is now under the consideration of the Govt”. Another settler from the same area saw Griffith in July. The editor of the Cooktown Independent urged drastic action in a telegram to Griffith on 5 August 1885: “Horrible massacre at Resolution Island one Scotchman two aboriginals killed think Admiral Tryon should order Raven here proceed and chastise”. Griffith preferred Queensland’s domestic jurisdiction to use of the British navy, minuting the “Admiral does not interfere in such cases. I await fuller particulars”. When Cardwell residents and the divisional board complained about the depredations of Aboriginals on the Tully River, Griffith asked the commissioner of police if a detachment could not patrol the district occasionally”. When the Pyramid Sugar Company of Cairns complained that over two hundred acres of cane had been burnt by Aboriginals, Griffith informed them that the “Commissioner of Police has received instructions to provide police protection”.27
In 1885 Griffith decided that, when money became available, he would replace most of the native police by white police with black trackers. Seymour estimated in May that it would cost £10,000 to create nineteen new stations, each with two white constables and three black trackers, to which in June he added £9000 for new buildings.  

The general policy of the Griffith government was sympathetic to the Aboriginals, as obliquely acknowledged by a newspaper correspondent who wrote "we shall be better protecting ourselves than trusting to Mr Griffith and the black sympathisers." Griffith welcomed the arrival of missionaries, including the Rev. F. A. Hagenauer, and was concerned in the progress of mission stations, such as that on the Bloomfield River, to which he authorised the supply of a seine net for fishing. The Lutheran Mission at Elim on Cape Bedford asked for aid from the chief secretary when their boat was wrecked as "the Government has always been showing a kindly feeling towards the mission". Yet when a selector on the Russell River near Cairns offered to take charge of Aboriginals if a reserve were granted, Griffith was cautious: "while the Gov' recognize many good points in the offer they wd not be justified in making any bargain wh. wd involve a traffic in the labour of the aboriginals".  

Aboriginal problems were certainly not central to Griffith's administration, for he probably shared the view of many of his contemporaries that the problems would soon vanish. Meanwhile, he wished to take humanitarian measures, albeit tempered by legalism, for them. He continued the distribution of blankets to detribalised Aboriginals living near white settlements, although he refused to permit a distribution of blankets "to get rid" of Aboriginals in Goondiwindi. Tobacco and flour were also sometimes supplied from the colonial secretary's contingency fund.  

It was the asylums for the unfortunates that tested the limits of Griffith's liberal humanitarianism and the extent of the colony's commitment to those unable to survive in competitive society. Griffith had given evidence to a select committee enquiry in 1879 into the Dunwich Asylum that had disclosed various defects in its management. As a result of the enquiry, new regulations were gazetted on 9 May 1885. All luggage was to be searched, all money delivered to the superintendent and no intoxicating drinks were to be allowed. Extra work or continued good conduct could be rewarded with tobacco, tea or sugar. The Industrial Home in South Brisbane wished to send its untrainable subjects to Dunwich, though Griffith demurred in the case of a thirty-four-year old woman with an illegitimate child: "it would not be desirable to send a woman of this kind to Dunwich where there is no means of separating the sexes". Some of those sent to Dunwich were blind, but Griffith, giving no reasons, did not support suggestions for setting up a workshop or school for them.  

Under Griffith, the state extended its control over the charitable institutions. His 1885 act repealing the 1861 Benevolent Asylum Wards Act provided for government appointment of superintendents, matrons and inspectors. Inmates, if of sufficient means, were to pay for their maintenance. Penalties were provided for an officer who "strikes, wounds, ill-treats or wilfully neglects" any inmate; or who "conceals, or attempts to conceal, or refuses or wilfully neglects to show" any part of the asylum to a visiting inspector, justice or medical officer. The act also directed that "every letter
written by an inmate . . . shall be forthwith forwarded unopened to the person to whom it is addressed". When inmates objected to signing an agreement that a sum not exceeding ten shillings a week should be taken from any income they had to maintain them in the asylum, Griffith bluntly directed: "those who do not sign the form will be discharged". Most signed.

Complaints about the costs of maintaining the poor reached him from various quarters. In October 1884, anonymous squatters "out of rations" complained of the hordes of unemployed travelling on the roads near the Bowen River, and requested the government to issue flour, or tools to dig their graves. The police magistrate at Cairns was "constantly being appealed to for relief. Aged men wishing to get back south to their friends and wanting their passage paid etc etc". He asked for independent authority to act in such cases, but Griffith preferred that each case "be reported before action". When a Clermont magistrate sought authority to spend twenty-five pounds for rations for families "destitute of food" while husbands and fathers were away looking for work and the hospital was overcrowded with pauper patients and "claims on private charity are too onerous", Griffith authorised their being "supplied with discretion". He granted a hundred pounds a year to the Ladies' Christian Association of Ipswich which existed primarily to "relieve the necessities of the poor . . . irrespective of nationality, creed or denomination" and also supervised state orphans in Ipswich. The secretary of the Aramac hospital reported "heavy demands" being made on the pauper allowance (a hundred pounds was its share) that provided board and lodging for those awaiting admittance to Dunwich. "These old people cannot be allowed to starve; yet my Committee is of opinion that the hospital funds are not properly used in providing for them.". Griffith could only reply, "each case must be dealt with on its own merits".

Unemployment was increasing, and in 1886 a Relief Board office was set up in Brisbane to aid those in distress. Approached by the Labourers and Lumpers Union at Ross Island, Townsville, for a temporary cessation of assisted immigration (other than of domestic servants), Griffith gave an ambivalent reply. To their specific objection to immigrants being employed to unload mail boats he wrote:

I . . . am informed that the matters were induced to take that course in some cases in consequence of complaints of serious losses having occurred thro' the carelessness of men employed from the shore and that under ordinary circumstances it is not even likely that immigrants will be employed in competition with the labour at the ports.

A petition of the Labourers' Union in Townsville, signed in July by 679 members, urged the government to start some public works, such as reclaiming low-lying land. The mayor of Townsville supported the labourers' request, and also asked Griffith for money to build roads to new land purchases. Griffith assured both groups that the matter was receiving careful consideration, but told the mayor that local government legislation could not be amended to allow money for access roads. In October he was thanked for his prompt action in providing work. Other deputations in 1886 complained of unemployment, most notably in Brisbane, where Griffith requested investigations by police, employers and unions.
It was against this background of increasing unemployment that Griffith recommended improvements to Dunwich Asylum: larger vegetable gardens; tree planting; stricter separation of the sexes ("as unpopular as it is necessary"); more careful sifting of applications for admission; employment of a capable carpenter; expansion of the piggeries; employment of a capable wardsman; and the introduction of a ration scale. Improvements were, however, limited by a "most rigid economy".

The condition of Queensland's finances also affected Griffith's efficiency in running other institutions, such as orphanages and hospitals. Yet Griffith considerably increased the colony's concern with health matters. Following complaints about health hazards in lodging houses in Brisbane, he set up a committee to report on typhoid fever in the city. In October 1884, his government passed an act that went much further than the 1872 act in making "better provision for securing and maintaining the public health". The Central Board of Health was set up to superintend its provisions, standards were set for sewerage, drainage, cellar dwellings, lodging houses, nuisances, food, infectious diseases, and slaughter-houses. Griffith's subsequent detailed minutes on hospital questions revealed both his continued concern with questions of health, and his realisation of the inadequacy of his government's measures.

Another health debate in the Queensland parliament in November 1884 urged repeal of the 1868 Contagious Diseases Act. Griffith argued that the act should be maintained in the interests of the general health of the community. He pointed out that society took stringent precautions against other diseases, such as smallpox, cholera and typhoid — all looked upon with horror — and so should maintain the law to control venereal disease. He had no difficulty in reconciling his liberal principles with this governmental action:

It is said that [the Act] is an infringement of the liberty of the subject. Of course it is, and so is every law relating to the public health; but we have for many years adopted the principle that in matters of public health the comfort of the individual must yield to the good of the public.

Reformatories also concerned Griffith, and he carefully scrutinised the cases. When a warrant was issued by the Police Magistrate at Gympie for the removal to Lytton Reformatory of a three-year-old boy who had been sentenced to seven years in a reformatory as a neglected child because he lived with a thief, Griffith was shocked and ordered he "be sent to an Orphanage for which purpose sentence must be remitted". Griffith also intervened to stop a six-year-old girl being sent to Toowoomba Reformatory, but he allowed a Charleville magistrate to send a ten-year-old boy to a reformatory. The boy was reported to be an "incorrigible character; no education, will not reside with or obey father, the mother has deserted husband".

In 1884, Griffith's government consolidated the insanity provisions of the colony in a new act. The official visitors to Brisbane Reception Home pointed out that no procedure had been laid down for temporary reception of the insane whilst they were being conveyed from distant places to the asylum. The medical superintendent had received them and recorded their names, but he had no legal standing until they had been formally admitted.
The police had to detain those suspected of being of unsound mind in lockups until they could be brought before two parties. But Griffith did not believe any action was necessary:

a person in such a condition as suggested must of necessity be taken care of somewhere. The lockup is probably the least desirable place but there is no reason why he should not be taken there . . . when a certificate cannot be obtained the Keeper of the Reception Home will be held indemnified against the consequence of removing the patient.*

Procedures were changed when a woman died after being taken from the General Hospital to the Reception Home "in a furniture van without any cover to it" and before any doctor saw her. In future, medical officers were to be informed immediately, a change that Griffith approved.**

Given that Griffith continued to practise as a barrister, and had been an attorney-general, it is not surprising he chose to supervise legal matters. Yet even then, the degree of his involvement was remarkably high for a premier. His interventions in cases of remission of sentence began as soon as he became colonial secretary. For example, on 30 October 1883, several Cloncurry residents petitioned for the release of a man sentenced for aiding and abetting an assault on a fourteen-year-old boy, on the grounds that the man had been returning to his camp when he was "innocently inveigled" into holding the boy while the child was whipped by a man believed to be the boy's father. Griffith asked what the relationship was between the two men, and when he was assured they were strangers, "recommended remission of remainder of sentence".*

Griffith did not always recommend reductions, nor did he often disagree with the judges. When a prisoner sentenced for carnally knowing a child under ten years of age appealed for remission after nine years of good conduct, Griffith refused. His reactions were similar when a St Helena prisoner pleaded for remission after serving five years of a ten-year sentence for having carnal relations with his daughter. The prisoner had saved a worker's life at St Helena and McIlwraith had promised to help him, but Griffith held otherwise: "the prisoner's crime is too horrible to be atoned for even by much more meritorious services". A similar case brought a similar reaction. A youth, about sixteen years old, was sentenced to ten years' penal servitude for an assault on a married woman. A petition, signed by such influential men as John Petrie, Herbert Guiness (the rector of Trinity Church), two members of the Legislative Council, and several members of the Legislative Assembly, sought his release on the grounds of his youth, his good conduct before and after the offence, and the fact that both he and the woman had been drinking. Griffith was unmoved.*

Sometimes Griffith thought the courts too lenient. In 1875, at Maryborough, a husband and wife were sentenced to twenty years for the murder of their cousin (whose surname was Griffith). The man pleaded for remission after serving about ten years, admitting his guilt but claiming that he was provoked by being repeatedly struck, and had "seized the first thing that came to his hand which unfortunately proved to be a knife". Griffith refused the plea: "the Jury took a very merciful view of the case in finding him guilty of manslaughter instead of murder".*

Griffith was interested in reform of the criminal law and had already
begun the work that was to culminate in his major codification of the Queensland statutes. In November 1884 he met Howard Vincent, recently retired from Scotland Yard, who supported probation for first offenders. Two years later, Griffith introduced a bill "to Amend the Criminal Law so far as regards the Punishment of Prisoners Convicted of First Offences". In his second reading speech, Griffith gave credit to Vincent for the idea. New Zealand had passed similar legislation in 1885. The preamble of the bill expressed the belief "that many offenders might be induced to reform if, instead of being committed to prison upon their first conviction, an opportunity of reformation were afforded them". Persons convicted of a "minor offence" (one for which a sentence of less than three years could be imposed) could be granted probation. Each person so released was required to sign a recognisance of good behaviour, and to report to the police. A year after the system was introduced, Seymour complained that it was being used in a "seemingly indiscriminate manner"; there would soon be "more probationers than constables" so that "in a short time the criminals will get the upper hand". Eighty-five prisoners, some of whom were serious offenders, had been put on probation. Seymour wanted the power of magistrates reduced to making recommendations only, while the colonial secretary should have the opportunity of enquiring into a prisoner's previous character before any probation order was made.

Griffith remained at the head of the bar while premier. In the four and a half years of his premiership, he appeared in thirty cases before the Supreme Court. He appeared in six goldmining cases, the most significant of which were the four in which he successfully represented the Mt Morgan Company. He also appeared in property, contract and practice (three cases each), and four cases dealing with the legal profession (admission and debarrment). The limits of local government authority were discussed in four cases; the remaining cases reflected the variety of his expertise: probate, insurance, insolvency, admiralty, and (a joker) the legality of a game.

The only recorded example of Griffith's political commitments interfering with his work at the bar was in a property case where Griffith sought leave to speak after his junior counsel, Feez, because "he had had to be unavoidably absent during part of the morning".

The powers of local authorities were very important to the political leader of the colony. Griffith appeared for the Brisbane Council in a dispute over the opening of Victoria Bridge, which linked the centre of Brisbane with South Brisbane. An 1861 act provided that no bridge should obstruct the navigation of sea-going vessels. The owners of riverside land above the Victoria Bridge sued the council for £5000 damages allegedly suffered because of the refusal of the council to open the swing bridge for their vessels. Griffith's defence was that the council had maintained the bridge in the condition in which it was when put under its control by the 1878 Local Government Act, but the court found that the council, being charged with the continued maintenance of the bridge, was obliged to keep it from obstructing the river highway for sea-going vessels. The council could not shelter behind the illegal act of its predecessors; the right of highway across the river could only be enjoyed subject to the pre-existing paramount right of highway by means of the river.
An example of a contract dispute in which Griffith appeared, involved a purchaser refusing to accept delivery of 792 bags of chaff because they were not according to sample. He elected to rescind the contract. The vendor (for whom Griffith appeared) at first represented that the chaff was of like kind and quality as the sample, but withdrew this claim before the hearing when it was discovered to be incorrect. In the hearing before Harding and a jury, judgment had been given for the purchaser. Griffith appealed on the grounds that the contract in writing was not a sale by sample, but was for specific goods that had been delivered to the purchaser. (The jury had rejected the suggestion that the vendor had behaved fraudulently or carelessly.) In reply, Real argued that the rules of equity had applied since the Judicature Act, and that rescinding the contract showed that in fact a false statement had been made on a material point for the purpose of inducing the other party to enter the contract. Griffith strenuously opposed this as an "utterly new doctrine" that would necessitate the rewriting of all works on sales and contracts. The misrepresentation was only of a collateral character, and was insufficient to justify rescinding an executed contract.

Lilley disagreed with Griffith by confirming the judgment for the purchaser. He accepted Real's argument that the Judicature Act meant that the Courts are not hemmed in by the narrow lines of the old common law decisions. If the doctrines of common law and equity in any case are in conflict, the equitable rule prevails; or if equity provides a remedy and the common law none, or if the rule in equity is wider, or the relief more complete, then judgment must be given on equitable principles.

He thought that in this case "the representation was a condition going to the root of the contract, and not a warranty", so that the right of rescission was clearly established. Griffith lost another case when he appeared for a ship in a vice-admiralty case. Its master was blamed for not keeping a proper lookout before a mid-ocean collision.

In a difficult probate case heard in September 1887 Griffith, his opposing counsel, and Lilley sought justice. A testator left the residue of his estate to his wife. Two trustees were to receive the income and profits during the wife's life and to apply them to the maintenance of the wife and children. The will had directions about disposing of the estate after the death or remarriage of the wife, but made no specific gift during the life of any person. However, the income of the estate was not sufficient even to pay probate duty, so the trustees were receiving no income to maintain the wife and children. Griffith sought for them the powers of a tenant for life over the estate, applying legislation that his government had introduced the previous year, the Settled Land Act:

the circumstances ... were hard. Though the estate was a large one, the petitioners were in straitened circumstances, with nothing coming from the estate ... It was very desirable that the Court should help them if possible. Their only chance of relief was by a sale of part of the property.

The opposing counsel stated that his clients were also anxious that the declaration sought by Griffith should be made. Lilley, however, could find
nothing in the will that would empower him to give a life-tenancy, nor anything in the act that would enable the court to say that the wife or children could exercise such a tenancy. He regretted his inability to make the declaration, and concluded by attacking the existing law:

I hope the time will soon come when the barbarous power of disposition of his estate by a testator in regard to his wife and children, will cease to be a part of the law of the colony, as a civilised community... the power of sale might be easily obtained by a short Act of the Legislature.58

Griffith did not change the law in his remaining few months in office.

Questions of practice often led to much legal disputation, for instance over the application of the 1876 Judicature Act. In one case, an action by a landlord against a tenant, the counter-claim was for title to eight other pieces of land. Harding agreed that the title to all nine pieces of land be tried together. Griffith, acting for the landlord, contended that the court was not competent under the Judicature Act to try the counter-claim and that it was manifestly unjust to the plaintiff to do so, as the pieces of land were not under the same title, and therefore not the same "subject matter" as required by the act. His client's title, he argued, was distinct from anyone else's title. Lilley's judgment upheld Harding's refusal to strike out the counter-claim; it was within his discretion as a judge, and his decision should not be interfered with unless the rejection would clearly cause either inconvenience or injustice. Lilley argued that not much more was involved in a judge determining all questions of title to one piece of land to decide on the eight other pieces

unless, as my learned friend, Mr. Griffith, ingeniously and strenuously contended, [in the same judgement he referred to Griffith's "accustomed ingenuity and persistence"] there might possibly be many other outlying questions of title and many other parties not present now in the action,

He was sure, however, that Harding would have considered such possibilities. Lilley also rejected Griffith's arguments about the inapplicability of the Judicature Act, remarking "it is, perhaps, out of the way to say what was the intention of the framers of the rule, of whom the judges now on the bench were three". Overall he could see no inconvenience nor injustice in allowing the counter-claim:

it is, really, no harm to force a plaintiff to prove his case, or disclaim; it is, in our opinion the very thing the law was intended to do... Assuming a man brought up suddenly to prove his title to eight other pieces as well as to this; — Mr Griffith says, "I cannot be ready with my proof, to go to trial". The remedy is the same as before: to appeal to the sense of justice and the discretion of the judge, and he will set you right; he will postpone the trial.59

Lilley was clearly saying to Griffith "methinks you do protest too much".

Conflicting loyalties affected the court when Griffith appeared in support of an application by an articled clerk, a graduate of Sydney University, to be admitted as a solicitor after three instead of five years' service. Griffith argued on the basis of 1857 and 1859 New South Wales acts [which he claimed were still in force in Queensland, despite its 1867 Supreme Court Act], pointing out that both he and Mein had been admitted after three years' service. Lilley and Harding disagreed, holding that the 1867 act
repealed all existing regulations and statutes relating to admission. The privileges conferred on graduates of Sydney University were "to encourage a liberal education of students of Sydney" and, however advantageous these may be, "it was very questionable whether the Supreme Court there is benefited . . . by the admission of articled clerks after only three years' service".  

Prejudices were revealed in another admission case when Griffith failed to persuade the court to admit as a solicitor a Scottish law agent. Griffith admitted that the board of examiners was not satisfied of his entitlement. The Queensland act allowed "writers to the signet" to be admitted, but not "law agents", although Griffith pointed out that in 1873 these two ranks, as well as solicitors and procurators, had been amalgamated into one body. In the hearing, Lilley referred deprecatingly to the English Colonial Attorneys Relief Act whereby colonial solicitors were required to have had seven years' practice before being admitted (that is, twelve years' apprenticeship), and added: "our solicitors have no show in Scotland; they dare not show their faces". Lilley's judgment, an Australian nationalistic call later to be supported by Griffith for Australian judges, made strong points: we are not disposed to imitate the "free grace" of the Imperial statute by admitting agents from the inferior jurisdictions of any country to the ranks of our carefully trained and skilled solicitors . . . no concessions [have been made] . . . to colonial solicitors in Ireland and Scotland, and in England the right of admission conceded to them has been carefully hedged around with invidious conditions implying infirmity on the part of the colonial practitioner . . . the standard of education in general and professional knowledge required of our solicitors is at least equal to that prescribed for English solicitors . . . We see no reason . . . for continuing the privilege of unrestricted admission to the solicitors of England and Ireland and the Writers of Scotland, or to the solicitors of other countries, unless our solicitors are placed upon a footing of equality in those countries. We feel that the members of the legal profession in superior Courts in every country under British rule should be free to practise throughout the Empire . . . We will allow a reasonable time to elapse and then close our ranks to their solicitors until they open theirs to ours — on equal terms — in other words, until they grant reciprocity of admission.  

On another subject, Griffith's laconic minute, "law to be enforced uniformly", conceals rather than reveals his policy as premier in an always contentious area — the supply of liquor. 52 By the 1863 Publicans' Act, liquor could only be supplied on Sundays between one and three in the afternoon, and then only for consumption on the premises of the licensee. Soon after Griffith came into office, the police raided a number of licensees outside these hours, and each offender was fined two pounds. The Queensland United Licenced Victuallers Association sent a deputation to Griffith protesting a law that had been consistently ignored for years (which the police commissioner indignantly denied). The publicans wanted the law amended to allow Sunday trading from 11 a.m. to 1.30 p.m., and 6 to 10 p.m. and to permit supplying genuine "travellers" outside these hours. The temperance bodies in Brisbane urged that all bars should be closed on Sundays to prevent "drunkenness, domestic misery, pauperism and crime". A public meeting chaired by the mayor of Brisbane in the Town Hall on 15 July 1884 passed similar resolutions, which were handed to
Griffith by a deputation. Griffith took no action until 1886, when a new licensing Act permitted trading from 6 a.m. to 11 p.m. on Mondays to Saturdays, with no Sunday trading. The only exception was supply to lodgers, bona fide travellers, or persons disabled by accident or sickness.

The Queensland statutes allowed corporal punishment; for instance, the 1865 Offences Against the Person Act (section 70) provided for up to three whippings of up to fifty strokes at each whipping. Griffith enquired in 1885 about the flogging of a prisoner who had reportedly fainted towards the end of his punishment. The government medical officer recommended that only "30 to 35" lashes be given at the one time, and Griffith merely initialed the report. On another occasion he asked a medical officer for a report "as to whether whipping may safely take place". Griffith was to retain corporal punishment in his criminal code.

Griffith became closely involved in inquiries into the activities of F. Bernard, the principal Brisbane gaoler. On Friday 3 July he received a severe wound on the head "evidently caused" the doctor said, "by some blunt instrument — such as for instance a heavy stick". The gaoler said that while he was walking home near the dry dock after drinking in several hotels, he was attacked, and robbed of his watch. He blamed a recently released prisoner. Conflicting rumours reached Griffith, who ordered the police also to make enquiries at a South Brisbane hotel to find out "whether Mr. Bernard was in a row in Albert St. that night and went home in a cab without some of his clothes". The police tried to trace the movements of the gaoler and to find his watch, but without result, although "he is so well known to the police that he could not be in Albert St. without their knowledge". Griffith remained suspicious: "I am not at all satisfied with Mr Bernard's explanation of this matter. Let him be informed of the enquiries and be called upon to show cause why his services should not be dispensed with". Bernard was dismissed, despite his claims that his original story was true and his plea for reconsideration. A new gaoler, Captain John Jekyll, was chosen by Griffith, and sent to Victoria to examine their penal establishments.

Griffith displayed some sympathy with the emerging labour movement. For instance, in February 1885 W. M. Galloway, president of the Eight Hours Demonstration Committee, asked Griffith to proclaim Monday 2 March as a public holiday to legitimise the existing custom of the first day of March being a holiday, "having been kept up by them for so many years past, it is also looked upon now by the Employers as a holiday". Griffith approved without question.

The Society of Boilermakers and Ironshipbuilders of Queensland thanked Griffith's government in May 1885 for "the support given to local industry by calling of tenders for Dredges and Dredge plant within the colony". Subsequently, Griffith was sympathetic to a deputation from the ironworkers who, concerned at the depression in their trade, requested that "all constructive Iron-Work, such as Bridges, Railway Locomotives and Rolling-Stock, Tugs, Dredges, Punts, Waterworks Plant, Sugar Mills etc. required by the Government ought to be made within the Colony".

The Trades and Labour Council of Queensland, set up in 1885, sought from Griffith legislation on trades unions, labour liens, employers' liability, land boilers' inspection, and factories and workshops. It is a moot question
whether at this time there was much difference between the ideas of the labour movement and liberals such as Griffith. Moves from classic laissez-faire liberalism towards the so-called "new" liberalism had Griffith's support. The new liberalism acknowledged the workers' right to combine, and required the state to recognise this right.

In September 1886 the labour movement complained of threats to put the old conspiracy laws into force. Griffith's reply was to introduce a bill the following month to legalise trade unions. He argued he was following British example and that unions served a useful purpose. Despite some criticism the bill became law on 2 December 1886. An Employers' Liability Bill was also introduced in the 1886 session. Although the Trades and Labour Council sought amendments that would have brought domestic servants and seamen under the legislation, they were unsuccessful. Their request that all actions should be decided by a jury was also refused. Nevertheless the Bill considerably extended the liability of employers for personal injuries suffered by some employees. The Trades and Labour Council sent Griffith copies of an amended Victorian factories bill and a lien law from Massachusetts, and referred him to a New Zealand land boilers inspection bill.

Griffith maintained his concern with wider Australian issues. After the British government passed the Federal Council Act in 1885, Griffith and others made fruitless attempts to persuade New South Wales to join the scheme. Griffith, knowing that Victoria intended to join, persuaded the Queensland legislature to pass an act on 5 November 1885 that provided for Queensland's joining if New South Wales, Victoria or South Australia also agreed.

For Griffith, the main significance of the Federal Council was that it kept him in close contact with the leaders of those colonies that joined it. As well, although New South Wales remained aloof, Griffith usually called on its politicians on his way south to the council meetings. In its initial planning stages, in January 1885, he visited Sydney, Melbourne and Hobart conferring with "Service, Berry and Kerferd as to Federal Council Bill". Griffith and Dickson were appointed to represent Queensland at the first meeting of the council in Hobart in January 1886. On his journey thither, Griffith again stayed in Melbourne, where he revised the standing orders for the Federal Council and drafted a civil process bill.

At the first meeting, Victoria, Tasmania, Western Australia, Fiji and Queensland were represented. South Australia, distrusting Victoria, seemed unlikely to join unless both government and Opposition members could represent the colony. Governor Musgrave had urged Griffith to try and change the system: "If Service will join you in supporting from the other side I believe it will make all the difference and [increase] the chances of success for what otherwise I fear will be no better than a fiasco". Service was elected president, as expected, on Griffith's motion, although in Queensland, Griffith was seen as the eventual leader. Thus Musgrave wrote to Griffith:

From what you said before you left I expected that Service would be elected . . . and I admit that I do not see that you could well have done otherwise than put him in the position which he so much coveted. The arrangement will do very well for this Session . . . I am disposed to think that it may be expedient to keep
him in the office for the present. It could be understood that you should succeed to the vacancy whenever it occurs.72

Griffith tried to expand the Federal Council. In New Zealand he used as his go-between Fiji’s representative, William MacGregor, who believed that

if you procure the admission of New Zealand . . . you will have done good service . . . If New Zealand comes in, New South Wales will follow.73

Griffith continued to try to persuade New South Wales to join, writing to its new premier, Sir Patrick Jennings. Musgrave remained optimistic: “it will be stupid for N.S.W. to hold aloof”.74

From the inauguration of the Federal Council, Griffith had been closely involved in Australian moves towards common action on overseas matters (later to be called ‘external affairs’). He maintained contact with politicians, military and naval leaders, and public servants both in the other colonies and in London. His role — which was significant — can be analysed under different headings, although he himself was concerned with one goal: how to develop an Australian rather than a colonial consciousness. The problems of New Guinea, the New Hebrides, New Caledonia, and the military and naval defence of the Australian colonies were, for him, interrelated.

At the 1883 Intercolonial Conference, Griffith had argued that New Guinea was far more important to Australia than the New Hebrides, and that Great Britain should annex the eastern part (the area unclaimed by Holland) as soon as possible. The Colonial Office was not unsympathetic,
provided that the costs of administration were shared by the Australian colonies. Derby suggested, as an interim arrangement, that a commissioner be stationed at Port Moresby and that the colonies contribute £15,000 for the year to June 1885. Griffith was willing for Queensland to pay its share, so long as one other colony also contributed. Service received promises from Tasmania and Western Australia, as well as the support of his own government and by July 1884, New South Wales and South Australia had also agreed. The question was closely allied to the annexation of the New Hebrides — for which Service was still pushing — and to defence. Thus, on 8 July, Griffith altered his bill to include a reference to the maintenance of a naval force in the waters of New Guinea. A clause was also added to cover the possible extension of protection to "any other island or islands in the Western Pacific". It passed the Queensland Legislative Assembly on 30 July.

In a telegram of 17 September, Service urged united action to overcome the "unsettled and unsatisfactory" position and Derby's "policy of delay", as "at any moment another power may appear upon the scene". Griffith replied that he had asked Garrick on 16 September to enquire about the delay. Garrick was told that the British government was still considering the extent of the intended commissioner's jurisdiction. Griffith then telegraphed to Service his agreement to a joint request for immediate action, although he did not want to go beyond the 1883 Intercolonial Conference decisions, as this would indicate "unsettledness of purpose" by the colonies. A. Stuart, premier of New South Wales, refused to press Britain and regretted that Service had included other islands in the Pacific. Service replied that "patience is but a poor substitute for pressure in cases like the present one". Griffith, believing Service was going beyond the 1883 agreement, told Stuart, "I cannot understand what Service is driving at". Service's proposed telegram to the agents-general included reference both to New Guinea and to the prevention of any further acquisitions by any foreign power anywhere in the Pacific. Stuart agreed with Griffith that Service was going too fast and too far; "these delicate matters cannot be forced or bounced out of Imperial Government". Griffith then refused to support Service's proposed telegram.

On 10 October, Britain announced her decision to declare a protectorate over southeast New Guinea. Although Service was dissatisfied, Griffith regarded the action as a "first step" towards carrying out the resolutions of the 1883 convention. He thought further possession would follow if the Australian colonies acted "reasonably".

General Scratchley was told on 17 November that he had been chosen special commissioner. He had been commissioner of defence for the six colonies and New Zealand from 1878 to 1882. Griffith welcomed the appointment, although he believed he had "no legal jurisdiction and authority of any kind". Griffith hoped the protectorate would be extended to include the Louisiades.

Germany's proclamation of her protectorate in the north on 3 November led to a resurgence of Australian protests. Griffith cabled a warning on 29 December that relations between the Australian colonies and Great Britain were likely to be seriously affected by "prevailence of feeling of distrust". A public meeting in Cooktown sent the premiers of Queensland and
Victoria two resolutions, one condemning "Mister Gladstone and Earl Derby" for having "disregarded the wishes and sacrificed the interest of the Australian people by encouraging Germany to annex part of New Guinea", the second complimenting the two premiers "for having peremptorily and formally protested against the action of the British Government". By not declaring himself strongly on either side, Griffith had managed to retain the support both of Service (whom he saw in Melbourne on 29 January) and of his nationalistic constituents, as well as keeping the confidence of the New South Wales' leader, Stuart. Even McLlwraith was not antagonistic, for he wrote thanking Griffith for sending him details of the protectorate.*

In January 1885, Derby announced a change in British policy: the Louisiades, Woodlark, D'Entrecasteaux and other islands were to be included in the British protectorate, which was to become a British dominion as soon as possible. Queensland was asked whether it was prepared to "give assistance to establishment of jurisdiction by arranging to receive offenders for trial and punishment. Expense to fall on joint fund". The Australian governments were unhappy with the arrangements, and Griffith prepared a joint telegram protesting the lack of information and at the proposed boundary with Germany. In the Colonial Office, Ashley minuted on 14 March:

has not the time arrived when we ought to let the Agents-General know exactly what we are proposing to agree to as a compromise. That they may, as Mr Garrick says, confidentially communicate with their governments. Half their soreness arises from their thinking we hide things from them."*

Derby, however, refused to be more specific until he heard from the Foreign Office.

Griffith was at the centre of planning for the protectorate and the eventual colony. Scratchley, the new commissioner, arrived in Australia by January 1885. Griffith saw Scratchley in Melbourne on the ninth, and in Sydney on the first and second of February, and also met him regularly when Scratchley visited Brisbane in May and again in August. When Griffith offered, on behalf of Queensland, to assist the new government in various ways, he estimated Queensland's share of the promised £15,000 to be just less than £1,500, based on the proportion of Queensland's population of 309,600 to the Australasian population of 3,231,762. Griffith was involved in all the financial negotiations for the protectorate, maintaining constant correspondence with the premiers of the other colonies. His memorandum of 18 May 1885 linked the question of costs to the still undefined nature of Scratchley's powers: "it becomes apparent that the Special Commissioner for New Guinea has hitherto no legislative powers conferred upon him and only such administrative or executive powers as may be exercised by a Deputy Commissioner under the Western Pacific Order-in-Council". Until the form and extent of jurisdiction was decided, Griffith refused to consider any increase in the colonial contributions. Even the cost of a steamer seemed likely to be crippling; the lowest tender of £10,260 a year was "a ridiculous sum ... simply ruinous".*

Scratchley conferred with Griffith in Brisbane in August before he left for New Guinea, the two men agreeing that the colony should be closed
to Europeans. They also agreed to Douglas, Queensland's magistrate at Thursday Island, acting as Scratchley's representative to exercise a general supervision over the portion of the New Guinea coast adjoining Torres Strait, with powers to grant licences to trade and to explore.

Soon after Scratchley reached Port Moresby, he asked Queensland's help in deporting two British subjects. They had previously been removed by the naval ship, *Swinger*, but had returned when no charges had been preferred against them. Scratchley informed Musgrave that Griffith had assured him verbally that his government would assist. Griffith persuaded his cabinet to receive in Queensland prisoners deported from New Guinea under the Western Pacific Order-in-Council.83

Scratchley died after three months in the protectorate. Griffith helped choose his successor, recommending John Douglas to Service (whose personal choice was Thurston from Fiji). The Colonial Office agreed to offer the position to Douglas temporarily, but were very reluctant to make the appointment permanent because they regarded his wife as socially unsuitable.84

At the Federal Council meeting in Hobart in January 1886, limited progress had been made towards joint action by the colonies. But it was at this meeting that MacGregor, representing Fiji, so impressed Griffith that he became MacGregor's strongest supporter for appointment to New Guinea. MacGregor appealed for consideration of the rights of the native peoples, a sentiment Griffith found most compatible with his own views. The two men had much in common, and spent a few days together in northern Tasmania before returning to their respective colonies and beginning a correspondence that continued all their lives. MacGregor, on his way back to Fiji, let his mentor, Sir Arthur Gordon know he would accept New Guinea if offered it.85

In March Griffith made positive proposals for the future of New Guinea. Queensland would undertake to defray the costs of administration for ten years at a sum not exceeding £15,000 a year; the other colonies should undertake to repay to Queensland a proportion of this amount; the British government should be asked to contribute towards the initial capital costs; Queensland should have first charge on the surplus revenue of the colony; and that once the guarantee was given by Queensland, the Imperial government should assume sovereignty over the protectorate and appoint an administrator. Griffith wanted the constitution of the colony to prohibit private purchases of land, movement of natives either within or to places outside the colony except under protective ordinances, and trading with the natives in arms, ammunition, explosives and intoxicants. He also wanted the administrator to be subject to the instructions of the governor of Queensland in his legislative and administrative functions. The Queensland governor should consult his Executive Council on all New Guinea matters, and the government of Queensland should consult the governments of the other contributing colonies "in all matters other than those of ordinary administration".86 The British government would also have the power to disallow proposed laws.

These proposals were, from the beginning, very contentious. Douglas, for instance, wanted more emphasis on European development, anticipating "the gradual attraction of the native races to industrial pursuits. Land
will be acquired by the government from the natives and will be sold". MacGregor, on the other hand, believed Douglas was thinking "only of Queensland and the Queensland Parliament", while Governor Musgrave remained suspicious of Queensland's influence, particularly of its sugar planters and their demands for labourers.87

The efforts of both Griffith and Douglas to obtain financial support from New South Wales and Victoria were largely unsuccessful when Douglas sought assistance for an expedition across the Owen Stanleys. Griffith asked the southern governments for £400 each, but Gillies refused and New South Wales did not reply.88

In November 1886, the Queensland parliament adopted the resolutions to which the three colonies had agreed in Sydney in April. Griffith telegraphed the Colonial Office, assuring it that the sum necessary for carrying out these proposals would be provided by the colonies. Part of the telegram reached London in a corrupt form, seemingly suggesting that the guarantee was for only five years and was dependent on the Imperial government providing some extra amount. The Colonial Office, still waiting for a cabinet decision on sovereignty and costs, telegraphed: "the grants from this country must be limited in amount and duration while the colonies must undertake for a limited time to provide all further necessary expenditure". Griffith secured the agreement of the other premiers to a reply that stated colonial objections to a perpetual guarantee.89 Griffith hoped the matter would be resolved at the 1887 Colonial Conference.

Griffith played a less significant role in Australian relations with the French in the Pacific, which involved French escapees from New Caledonia (their colony since 1853) and disputes over the future of the New Hebrides, which was of far more importance to the southern colonies, particularly Victoria.

By the 1870s, about three thousand convicts had been transported to New Caledonia. Some of them had escaped and reached the Australian Pacific coast. Following protests from the Australian colonies, a treaty was signed in 1876 between Britain and France for the extradition of fugitive convicts. Up until July 1883, fifty-five escapees had been extradited, but then the French authorities refused to apply for further extradition and McIlwraith was "compelled to allow" some escapees "to go at large". He and Service pressed the British government for action.

In May 1884, Service urged the other premiers to protest to France, but Stuart in New South Wales was cautious, and Griffith non-committal, suggesting instead that each colony introduce legislation to control escapees.90

Four escapees landed near Bloomfield in August. One of them was allegedly speared to death by the Aboriginals (in fact he died from the effects of the voyage). Griffith told Milman to arrest them as "vagrants", but the bench refused to treat them as such, because one had money. Griffith reiterated that "the best thing to do is to sentence them to a term of imprisonment in Brisbane gaol as vagrants. Their having money is of no consequence", and they were eventually sentenced, as vagrants, to three months in Brisbane gaol.91 The French authorities in Australia hoped that they could be extradited quickly to New Caledonia, so that a military warder would not have to be sent from the islands. Warrants were issued and signed, and the French vice-consul requested their surrender so that they
could be placed on a French man-of-war, Bruet, which was due to sail to New Caledonia. The police commissioner, however, refused to surrender them on two grounds: they had not been identified by a warder from New Caledonia, although photographs of the men had been forwarded to the island; and the treaty allowed fifteen days' notice to the prisoners before extradition. On application to the Queensland Supreme Court, the chief justice on 13 October ordered the surrender of the three as fugitive convicts.\textsuperscript{92}

The colonies hoped the British could persuade the French to exclude the Pacific from their penal system. In November 1885, however, New Caledonia was named as an alternative to Guyane for recidivists.\textsuperscript{93}

Victoria and Queensland continued to protest throughout 1886. The French offered to stop transportation to New Caledonia if they were given control of the New Hebrides, but Griffith, now chairman of the Federal Council standing committee, argued this could be an "unwise bargain".\textsuperscript{94}

Queensland recruited labour for her sugar plantations from the New Hebrides, where Griffith was regarded by some of its missionaries as the leading opponent of the abuses of this traffic. When he had become premier in 1883, he had led Queensland negotiations with Britain over the future of the New Hebrides. Missionary and commercial interests in Australia had been pressing Australian governments to take control of the islands, and they had found a champion in Service. Britain, wishing to maintain good relations with France, and more concerned with other parts of the world, expressed little interest. Within Queensland, some groups favoured the annexation of these islands to Britain, but Griffith was not in the forefront of any agitation.

When Griffith became chairman of the Federal Council standing committee, he had to coordinate the suggestions about the New Hebrides. R. Murray Smith, the energetic Victorian agent-general, protested against the suggested annexation by France and Gillies urged combined action. Neither Griffith nor his governor, Musgrave, shared their views, but Griffith did protest on behalf of the Federal Council. The Colonial Office was not impressed:

> Mr Griffith is sure that the rejection of the proposed arrangement will not weaken our expostulation with regard to the exportation of French convicts — this of course is puerile, for it must have been obvious that this would be the effect. This inability on the part of leading colonists to comprehend diplomatic effects and causes is having serious consequences — having to rely on this country to conduct negotiations they use phrases and adopt views which they would carefully avoid if they had the full responsibility of settling questions with a foreign country. This difficulty will no doubt grow.\textsuperscript{95}

To Britain, the New Hebrides question was a minor issue in an enduring relationship with France; to Australia, the future of the Pacific was far more important than Britain's European, African or Asian entanglements. Even if Griffith gave priority to the future of New Guinea, he had to deal with electors who felt threatened by rumours of French annexation of the New Hebrides. On 22 April 1886, the Brisbane Municipal Council asked Griffith to cable London: "citizens Brisbane strongly protest against further occupation islands Western Pacific by France or other foreign power".\textsuperscript{96}
In June 1886, it was rumoured that the French had raised their flag in the New Hebrides. When a British naval vessel investigated, its captain was assured that the French were only bringing troops to protect their subjects, not to annex the islands. The Colonial Office hastily withdrew its proposed protest through the Foreign Office, "for if the story turns out to be an Australian hoax, we shall not look well with the French Government." A Presbyterian missionary, Rev. J. G. Paton, toured Queensland in late 1886. After each of his meetings at Allora, Toowoomba, Ipswich, Bundaberg and Brisbane (at which Griffith presided), protests against French occupation were sent to the Colonial Office. The Colonial Office took no notice.

Griffith was far more involved in the wider question of how adequately to defend Australia, another issue that reached a climax at the 1887 Colonial Conference. Queensland had been conscious of its defence problems since 1860. It had 1500 miles of coastline, about 20,000 inhabitants and 668,224 square miles to protect. The concentration of population in Brisbane accentuated these difficulties, as did the limited means of communications, irregular shipping services, small railway network and poor roads.

Queensland had decided initially not to follow the British militia system, as it could not pay for a standing army. Instead, the volunteer system was introduced. In 1862, Lilley's militia Bill was narrowly defeated. In the same year, Queensland formed a volunteer artillery force and gained its first guns: twelve obsolete twenty-five pounders. Griffith did not join a volunteer detachment, and he opposed, on a technicality, the 1872 Volunteer Bill, which would have authorized a bonus of twenty pounds for five years' service, and a pension for the family of a deceased volunteer.

In 1877, Colonel Jervois, a British expert, was invited to report on Queensland's defences. He recommended increasing the forces, buying a gunboat and building river defences for Brisbane, Maryborough and Rockhampton. His offsider, Colonel Peter Scratchley, supervised the construction of defence works in Brisbane in 1878 when there was a scare about Russia's intentions. The works were incomplete, and "practically useless for the purpose of defence." Griffith, as leader of the Opposition, was critical of the level of expenditure on defence during McIlwraith's premiership and of the failure to follow Jervois's and Scratchley's proposals. In McIlwraith's last year in office, expenditure reached £19,667, and in August 1882 a special appropriation of £70,000 was made to buy two gunboats. McIlwraith's annexation of New Guinea in August 1883 was partly intended to prevent German expansion in the Pacific. Lt. Col. G. A. French, a British officer, was appointed commandant of the Queensland Defence Force in September 1883.

After Griffith became premier, he was persuaded by French's arguments and the international situation to introduce a defence bill, which became law on 23 December 1884. The government was given the power to call-up all men under the age of sixty for military service. A small standing army was to garrison the forts and the police force were to come under defence forces orders in emergencies (a proviso that was to be used in the 1891 strikes).

With the purchase of the gunboats Gayundah and Paluma, a small per-
manent navy was established. Griffith’s government offered the Gayundah for Australian service with the Imperial squadron on the Australian station under the Colonial Naval Defence Act of 1865, hoping the men could train with the British squadron, but the offer was refused. The new gunboats were to complete the survey of the coast, which had been discontinued in 1879. The Admiralty agreed to share in the cost, providing £4,000 for three years.\textsuperscript{102} 

The exact status of the colonial gunboats was to cause much unease over the next few years. The Admiralty was asked in November 1884 if the boats could fly the blue ensign. It deferred a decision while the Colonial Office debated their status under the Colonial Defence Acts.\textsuperscript{103}

To the Queensland public, the status of the gunboats was less important than their existence. Most accepted their purchase as a welcome sign of Queensland’s maturity in having its own navy, albeit of two small gunboats. Commercial firms welcomed the extra protection promised by these ships, as well as the opportunity of supplying them: Burns Philp at Thursday Island offered coal for the Gayundah on her maiden voyage from Britain.\textsuperscript{104}

Walter Drake, a retired lieutenant of the Royal Navy, became instructor for the new naval force of about a hundred men. By chance, the formation of the navy coincided with further alarms of war. The first crisis came unexpectedly from a distant source, the Sudan. On news of the fall of Khartoum, Griffith urged the Australian colonies to combine to defend themselves: “the time has arrived when the long jealousies that existed . . . should be sunk and they should regard themselves as one great country”.\textsuperscript{105} When he heard that New South Wales had offered a contingent of troops to help defeat the Mahdi, and that Victoria was also prepared to send troops, he declared Queensland ready to raise a contingent. His commandant, French, had proposed an expeditionary force of five hundred and five field guns. Privately Griffith had doubts: in a conversation with pastoralist James Tyson on 18 February he had questioned the legality of sending men out of Australia, and he repeated these doubts to Service after Playford of South Australia suggested the formation of a joint Australian contingent: “the scheme of sending troops to a foreign country involves an entirely new departure in Australian affairs and needs calm consideration . . . I am very much disposed to think that action should be collective and not isolated”.\textsuperscript{106}

The Sudan crisis had overtaken yet another war scare. In early 1885, it had seemed likely that Russia and Britain might soon be at war over the Afghanistan frontier, and an attack by the Russian navy was feared. On 14 March, Admiral Sir George Tryon was instructed by the Admiralty to report on the movements of Russian ships. His request for Queensland’s help in reporting, began with the assurance, “I have no reason to suppose it will be necessary” and continued with detailed suggestions for preventing seizure of stores of coal.\textsuperscript{107} The isolated colony found these instructions disturbing.

No Russian ships came near Australia, although reports came in from Cooktown (where a German frigate was coaling), from Mackay (where an unidentified man-of-war, believed to be British, had been sighted south of Whitsunday Passage), and from Maryborough (where two German men-of-war were taken for Russian).\textsuperscript{108}
On Tryon's advice, supplies of coal were stockpiled for British naval vessels. The *Paluma*, which was on her way from Britain to work on the coastal survey, was to be kept available. One extra mobile gun seemed a valuable addition to the colony's puny armaments. Two hundred men were called-up for military service, and there were seventy-two men in the naval brigade, thirty-two of whom manned the *Gayundah*, which had been placed on a war footing. Naval pensioners in Queensland were notified that they should hold themselves in readiness. Defence messages were given urgent priority.

Brisbanites were made aware of danger by restrictions on river traffic: booms and other obstructions were placed across the Brisbane River to keep out hostile ships and, from 14 April, no vessel was allowed to enter the river between sunset and sunrise. The inhabitants of the northern towns were even more anxious. When Townsville sought news, Griffith could only reply that defence "was receiving the careful consideration of the Govt. I cannot give any definite information at present". By mid-April, Lt. Col. Blaxland had been sent to organise the town's defences. He stayed there until July. Townsville's volunteer naval brigade and naval artillery were both augmented. Mackay requested more rifles and ammunition, as did Rockhampton. From South Australia came a request for Queensland troops to help defend the Overland Telegraph Line.

The *Paluma* did not reach Brisbane until 8 May, and she then needed repairs. Meanwhile Griffith had expanded Queensland's marine defences by buying the *Advance* for Thursday Island, (at a cost of £12,000) and the tug *Otter* (for £15,000). Tryon offered to arm the latter with two sixty-four pound guns, commenting that "the coral girt shores of Queensland offer many situations where a small vessel can operate with comparative impunity against an unarmed sea-going vessel". He sent other guns north — another sixty-four-pounder and a twelve-pounder — which were mounted at Kissing Point. Griffith was grateful for these additions to Queensland's arms.

During the war scare, Griffith had an unexpected letter from Sir Henry Parkes who had become the commercial representative of a firm manufacturing torpedoes. He urged Griffith to adopt this make in Queensland, even offering to visit Brisbane to give technical information. Griffith decided, however, on the advice of French, to buy the same make as the Imperial services used.

By May the war scare had subsided with Britain and Russia referring their dispute to arbitration. But the offer of colonial troops had raised the question of discipline while serving with the British army. Griffith's 1884 Defence Act provided that when Queensland troops were called out for active service, they were to be subject to the British Army Act and all other laws applicable to British troops which were not inconsistent with that act, except that the men were not to be subjected to most forms of corporal punishment, but were liable to the death penalty or imprisonment. Griffith claimed that the act had only been intended to apply to forces while defending Queensland, "it was not ... contemplated by the Legislature that any local troops should be ordered under any circumstances beyond the limits of Australasia". Now that the possibility of troops "volunteering to serve out of Australia" had arisen, he agreed that they should be subject
to the same military discipline as other regular British troops. The judge advocate-general suggested legislation to cover such service, but Griffith warned that the present was not "an opportune time to make such a proposition to Parliament".113

Griffith was on good personal terms with leaders of the army and navy. He received lengthy private and official letters from Tryon, encouraging intercolonial co-operation, which they both saw as a prelude to a larger Australian contribution to Imperial defence. In May 1885, he warned of the dangers of an attack on Australia by a small squadron of ironclads: even if there were a "general concurrence of opinion within each of the colonies ... no one takes action and the result is that an acknowledged want is not met".114 Combined action by the colonies would favour economy and efficiency. As Tryon had heard "no news from home that justifies any cessation of our preparation for war", he saw an urgent need to devise an overall naval defence.

Griffith responded with a paper (dated 1 June) that was important in the eventual establishment of an Australian navy, as the first detailed proposal by a leading Australian politician.115 His plan followed Tryon’s suggestion of 27 March. The specific proposals were for an Australasian fleet of six fast cruisers [four if New Zealand did not cooperate] to be built and maintained at the joint expense of the colonies in proportion to their population. The fleet would be used only in Australian waters except with the joint consent of all the colonies. It would be part of the British Navy, but would fly the white ensign with a distinguishing mark, and would be partly manned by Australian cadets. The cruisers would be supplemented by seagoing torpedo boats. Griffith also advocated the formation, preferably in Sydney, of an arsenal and dockyard, built and maintained at joint colonial expense. He suggested that each colony should pass an appropriation act covering a ten year period and that three colonial commissioners supervise expenditure in conjunction with the British admiral.

Tryon sent Griffith’s views on naval development to London: "it is important that those at the Admiralty should know who have taken prominent and interested parts in this matter. Whatever is the outcome I am confident it is the beginning of what will be a very important national matter".116

In September, Tryon continued his discussions with Griffith in Brisbane. Griffith and Musgrave gained Tryon’s lukewarm support for the Queensland navy to the white instead of the blue ensign117 [which the Admiralty approved in August].118

French urged Griffith, in November 1885, to arrange a meeting of colonial military commandants "to discuss defence matters of intercolonial interest".119 such as the supply and reserves of stores, deserters, the combined Australian rifle team for Wimbledon, the rank and precedence of officers when on combined operations; and the establishment of a central military college.

Early in 1886, partly at the instigation of Tryon and of Governor Loch of Victoria, plans were initiated for an intercolonial conference on defence which it was hoped all the governors and premiers would attend. Musgrave was enthusiastic. The conference was to take place in February in Sydney, just after the Federal Council meeting in Hobart, but in
Musgrave's memorable words, ministerial instability made postponement advisable:

a lot of fellows trying to keep their seats on bucking horses are not in a frame of mind suitable to combined cavalry movements. This is pretty much the case with the premiers and ministers all round us just now. They, none of them, have control of their legislatures and they will not unite for any common purpose.120

It was a more limited conference that eventually met in Sydney in April. No governor had been able to attend, although several were interested. Griffith's diary records, in a typically unrevealing way, the bare facts of this long awaited meeting: "Met Jennings and Gillies and Admiral Tryon on board Nelson all day in Conference on Naval Defence. Lunched and dined with Admiral". The next day Griffith recorded: "went on board Nelson at 9.30 and discussed defence", and he was again on the Nelson on 28 April. It was during this Sydney visit that agreement was reached with Jennings and Gillies on the New Guinea question.121

Tryon was disappointed by the results of the conference. He had believed that Queensland fully supported his proposals, but by June the Griffith government had limited its financial offer to covering only the depreciation and maintenance, not the building, of vessels.

During 1886 the Queensland military forces returned to their normal duties. Eight days' continuous training was held for all corps in the southern district in April, and for the northern district in June. About five hundred men, including sixty-four naval personnel, were at Townsville where a sham fight was staged, with the guns on Magnetic Island and Kissing Point being "silenced" and the naval men from the Gayundah and Otter landing within Townsville's breakwater.122

Bundaberg had petitioned in late 1885 for the formation of a military company under new terms. As the petitioners were mostly "working men they cannot afford to serve as volunteers but are quite prepared to serve three years ... so long as they are paid for the time devoted to parades etc." Griffith considered delaying approval until the next financial year, but when he was assured that the men would agree to waive payment for service before 1 July, he recommended on 15 April the immediate acceptance of the offer.123 Company "E" of the Wide Bay division was thereupon formed with three officers and fifty-eight men.

The report of the British Colonial Defence Committee on "Local Preparations to be made in Anticipation of War" was sent to Griffith at the end of 1886.124 The committee's recommendation that each colony set up a small local defence committee led to the formation of a Queensland body that included Griffith (as chief secretary), the military commandant, the senior naval officer, Drury and Mein (as lieutenant-colonels of the defence forces), the portmaster, the police commissioner and Major Thynne (representing the volunteers).

At least in the matter of defence, Britain had shown some concern with Queensland's problems, and Griffith was optimistic when he left Brisbane for the 1887 Colonial Conference that similar progress would be made in other areas of difficulty.
Rethinking Priorities

No person has, by natural law, any right superior to the right of any other person
Griffith

Like the other Australian delegates to the 1887 Colonial Conference in London Griffith was to be disappointed by its achievements. During the remaining ten months of Griffith's premiership, he was frustrated in fulfilling the promises he had made at the conference. Of his absence from Australia between 21 January and 28 June, we have only the bare record. Julia accompanied him on this visit, so instead of long letters to her, the only private records available are his brief diary entries and letters to acquaintances.

Griffith was more in the public limelight than ever before, and at least one observer thought he faltered. Deakin, one of the four representatives from Victoria, later indicated his disappointment with Griffith's performance and leadership, discerning a cynical "absence of enthusiasm" and a "somewhat marked deference" to the Colonial Office.

Deakin's criticism ignores the strength of intercolonial rivalries: neither New South Wales nor Victoria would have been likely to accept a leader from Queensland. There may be better grounds for the "deference" slur, however, for Griffith had accepted a knighthood in 1886 and the British initially regarded him as the leader of the Australian delegations. Deakin might simply have meant that Griffith did not act as Deakin had hoped, but it is manifestly absurd to claim that Griffith had an "absence of enthusiasm" for questions on which he had spent so much time in Brisbane.

Queensland had kept pressing the Colonial Office to act on the New Hebrides problem, but without success. To a report on 13 April that the French were building forts on the islands, the office minuted that the Paris Temps had explained that they were only huts.

The conference revealed how wide was the gulf between the views of the Colonial Office and the Australian colonies. Difficulties remain in interpretation because the discussions of 26 and 28 April on the New Hebrides were secret. Was Graham Berry the first to attack Salisbury rather than Deakin? What part did Service and Griffith play? A newspaper account that Griffith "also spoke forcibly" seems more likely than Deakin's claim that "Griffith followed with a cool and dignified analysis of the case and an implied acceptance of the situation." As a result of the
Kanaka: "By golly, Sir Sambo, you got to tank all of us niggers for dat dere new rig out you got on."

A political cartoon from Figaro, 7 August 1886.
(Courtesy of the Oxley Memorial Library.)
Australian protests, no bargain was to be struck between Britain and France.

Griffith's New Guinea proposals of March 1886 were belatedly discussed and accepted at the conference, subject to later ratification by the British and colonial parliaments. He recommended to Sir Henry Holland, secretary of state for the colonies, that MacGregor be appointed administrator. He was offered the position in July. The New Guinea solution was seen as a personal triumph for Griffith, who had achieved cooperation in this, in contrast to the clash over the New Hebrides.6

When Holland had asked for topics to be discussed at the conference, Griffith's reply of 28 March outlined the problems of defence. He and Garrick had prepared a review of Queensland's defence plans.8 Griffith hoped that the April 1886 conference on the Nelson would be the basis of discussions of Australian naval defences. Tryon presumed Griffith would present the arguments they had discussed together over the last two years. He did not see Griffith before the premier left for the conference, but expected to meet him in England.7

On the opening day of the conference, 4 April, both the prime minister (the Marquis of Salisbury) and the secretary of state for the colonies, gave high priority to defence. The following day, those directly interested in Australian naval defence were invited to meet together. The issue seemed basically financial; both the colonies and the Imperial authorities were determined to reduce their shares of costs. The Admiralty had proposed that the colonies pay for the construction and maintenance of seven new ships for the Australian station; Griffith (partly at Tryon's instigation) suggested that the colonies pay interest (5 per cent) on the cost of construction, and pay for the maintenance. Duncan Gillies of Victoria insisted that the colonies pay only for maintenance.

At the first meeting on 5 April it became clear that Victoria stood against New South Wales, Queensland, and Tasmania. Sir John Downer of South Australia joined Victoria, and Sir John Forrest of Western Australia also declared he would follow their line. Griffith spoke out, and the colonies were reminded by the Admiralty that a ten-year agreement to pay 5 per cent annually upon the initial cost of the vessels only covered half the cost of construction and equipment. Neither the Colonial Office nor the Admiralty would shift, and the dissenting colonies reluctantly agreed to their terms. Griffith had taken the lead in settling the naval contribution scheme, and had pledged the support of his government.9

While in London, Griffith planned to discuss rival solutions to the problem of governing his enormous colony, but Holland, in an interview on 28 March, told him it was seen by his office as an internal Queensland issue. A report from the Colonial Office's law officers had concluded that, although it was legally possible for the British government to separate North Queensland without the assent of the Queensland legislature, such an action would be "highly undesirable".10

M. Hume Black was in London to press the separationists' case. A petition of 2065 signatories opposing separation, which had been organised by A. Rutledge, was received during the conference. Following interviews with Black and H. Finch-Hatton on 17 and 20 May, the Colonial Office ruled against them.10
Unlike most other Australian delegates, especially Deakin, Griffith was seen as an Anglo-Australian at a time when strong anti-British feelings were developing in Australia. His cautious, legalistic approach was anathema to extreme Australian nationalism, whether on the subject of republican separatism from Britain, or condemning British actions. Griffith had been born in Britain; it remained "home" to him, and he saw the colonies as an extension of Britain. He was on the conference committee that drew up an address to Queen Victoria from her "most faithful subjects and dutiful servants". During her reign, the British Empire had expanded in size and population from 100 million colonial subjects to 270 million. Griffith's loyalty to the empire neither prevented him describing himself as an Australian, nor implied any conflict between his loyalties. As a constitutional lawyer who had studied the evolution of colonial responsibility within the empire, he was accustomed to seeing colonial institutions within a British framework. He was not the man to lead impatient nationalist Australians: his rival McIlwraith, had he been in London, would have been a better leader for delegates such as Deakin.

Griffith's attitudes were complicated by another factor: his growing emotional attachment to Wales. In 1881 he had not even visited Wales, but six years later, he was very conscious of being a Welshman. Before he left Sydney, "Men of Harlech" was sung at a banquet in his honour. In England he was known as a Welshman, a recognition that he was critical of English domination. A commemorative scroll in Welsh, a treasured relic of a banquet on 14 April 1887 at Merthyr Tydfil, subsequently hung on his study wall in his Brisbane home "Merthyr". His 1887 return to his birthplace was vastly different from his early residence there in 1845 and 1846, or his disappointing sojourn in 1866. The high constable of the town had written to Griffith within a fortnight of his arrival in London, inviting him to a banquet in his honour, and giving him a choice of dates. His accommodation could not have been less like the dingy manse of 1845: William Crawshay wished to offer him and Lady Griffith the hospitalities of Cyfarthfa Castle.

Merthyr was not the only Welsh place to honour Griffith. He was invited by the mayor of Cardiff to a public banquet at the Town Hall. It was a tremendous occasion, helping to stimulate a legend that Griffith was only too willing to encourage: his romantic concept of his Welsh heritage.

Whatever the motives of the Welsh in honouring the successful colonial, they helped convince Griffith of his noble Welsh origins. Owen Morgan, previously unknown to Griffith, wrote romantically about the Cardiff welcome and told Griffith where to secure "the collected pedigrees of Morganwg and Glamorgan". He continued: "your features remind one of the Prichard and Gibbon families, who were and are descendants of the Cardigan and Glamorgan royal tribes of which, so called Wales contained fifteen". Such vague clues stimulated Griffith to make a genealogical search that was to prove time-consuming, costly and eventually futile.

In London, in April, he engaged C. H. Athill of the College of Heralds to research his family. Griffith's interest in his antecedents was not new: in 1866, he had copied a family pedigree while at Weston-super-Mare. An old lady there, Mary Smith, told him that his "great-grandfather Henry Griffith" had told her that his father and uncle came from Wales to Frome,
where they had worked as dyers. Athill stimulated his vanity by discovering that a Griffith coat of arms resembled that of the Llewellyn, Prince of Wales. From 1890, Griffith's main ally in this search was his cousin H. E. Griffith, also a lawyer, who shared his keenness to find proof of "royal" blood.  

Other letters from Wales flatteringly referred to his influence as premier: a judge in Llantrisant sent a neighbour's son to Griffith in the hope of advancing his engineering career in Brisbane; the mayor of Brecknock sought aid for a friend wishing to teach in Queensland. Griffith was asked
to become a patron of a proposed national Institute of Wales; and the National Eisteddfod Association (the Honourable Society of Cymmrodorian) formed for the encouragement of literature, science and art in Wales regretted that his early departure for Australia prevented him from accepting their invitation to a complimentary dinner, but made him an honorary member.  

During the Colonial Conference, Griffith was deluged with offers of hospitality. His vanity was stimulated, but he was less susceptible than some of his fellow delegates. Comparison with his reception in 1881, when he had been largely ignored by English politicians, may have allowed him to realise that the delegates were being consciously used by the English politicians. The Conservative ministry, which had come to power in 1886, had hoped that the Colonial Conference would increase its popularity. However, concern with the problems of the uncouth colonials was always subordinated to English interests. In the clash over the New Hebrides, Deakin thought the prime minister ignorant and illogical — and told him so. Griffith, in all his roles — as a Welshman, the son of a Nonconformist, and a resident Australian — while almost certainly agreeing that some English politicians knew little of Australia, and were often illogical, did not reveal his reactions. His realistic, cool, legalistic assessment was that Australia, as part of the British Empire, needed the support of England.

Unlike Deakin, Griffith accepted the British honours that were offered him. He delighted in being a K.C.M.G., and enjoyed the trappings that accompanied his recognition, wearing the regalia with pride and with meticulous attention to detail. His respect for the monarchy went beyond appreciation of the queen as the symbol of the source of authority in Britain and the colonies, to something approaching affection for Queen Victoria herself. He would not have regarded the framing of an address to the queen as an empty requirement, sincerely believing that the queen had played an important part in the expansion of the British Empire, and indeed he derived much personal satisfaction from formally delivering the address at Windsor Castle.

The Griffiths were unable to accept all their invitations during the fifty-nine days they were in Britain. At a Colonial Office reception, the delegates were invited to meet the Prince of Wales. The prime minister's wife had an at-home; the secretary of state for the colonies entertained delegates, as did his wife; the under-secretary of state gave a parliamentary dinner; the Duke of Cambridge gave a banquet at St George's Club; Lord Ducie, Lord Rosebery, the Earl of Dunraven, Sir James Anderson, Sir Charles Mills and Sir Thomas Fowell gave dinner parties. They, or Julia alone, were invited to at-homes by Lady Holland, Mrs Gladstone, Mrs Smith, the Countess of Rosebery, the Baroness H. de Worms, Lady George Hamilton and the Countess of Cadogan. The lord mayor gave a banquet at Mansion House; and they were entertained by the Royal Institute of Great Britain, the guilds of Fishmongers, Ironmongers, Clothmakers, Grocers and Drapers, the London Chamber of Commerce, the Merchant Taylors' Company, the Royal Geographical Society, the Institute of Civil Engineers, the Imperial Federation League, the National Fair Trade League, and the Empire Lodge of Freemasons. Griffith was made a member of eleven clubs, was invited to dine at Lincoln's Inn and with the Incorporated Law Society, and to
lunch with the master of Trinity. Characteristically, Griffith kept all the memorabilia of these invitations. But more significant, perhaps, were his private engagements: breakfast on 26 April with Lord Carnarvon (who described Griffith as one of his "colonial friends") and on 9 May with Lord Granville.  

Griffith was aware of the relevance of the American experience to Australia, particularly the development of its federal system, and he welcomed an opportunity of obtaining first-hand information about the nation. He left London earlier than many delegates so that he could return by way of America. Leaving Liverpool on 14 May, only five days after the end of the conference, he and Julia sailed to New York, spending a fortnight in the United States before departing from San Francisco on 3 June.

In the four days they spent in New York, Sir R. Cameron showed them Central Park and Haarlem, and gave them a dinner party at which the guests included Bishop Potter and Sir David Macpherson of Canada. The Griffiths crossed the continent mainly by train, visiting Niagara Falls (26 May), then going through Ontario to Chicago (27 May), and on to San Francisco (1 June). Their rail travel had been luxurious, the vice-president of the Pullman Palace Car Company having directed all agents and conductors to "see that he receives every attention". He records having a drawing room in his pullman coach out of Chicago, and on the Central Pacific train leaving Ogden.

Besides making his own observations on this east-west journey, Griffith discussed mutual problems with Americans. His observations were to be especially significant in applying United States precedents to Australian law and federalism. Griffith was already deeply involved, especially in the Federal Council, in the moves towards Australian federation, and was acutely aware of intercolonial jealousies. American attempts to minimise interstate rivalries and correlate state and federal jurisdictions were therefore highly pertinent. The principles of McCulloch v. Maryland, the foundation case of 1819, had been elaborated in 1871 in Collector v. Day, and the justices of the United States Supreme Court were continually facing the kinds of problems that were to concern Griffith in the future. He was acquainted with one Supreme Court judge, Stephen Field, the uncle of Lucinda Musgrave, the wife of Queensland's governor. In New York, Griffith lunched with Field's brother, David Dudley, a constitutional lawyer. His American experience supplemented Griffith's own extensive reading, and was to be applied four years later in his contribution to the framing of the Australian constitution.

After Griffith's return in July 1887 from the London Colonial Conference, he sought new ways to raise finances, partly to bear the cost of proposed defence preparations. On July 12, his minister for works, Miles, resigned because of ill health (he died ten days later), and in the following month, the details of his proposed land tax led to further disruption of his cabinet: both the treasurer (Dickson) and postmaster-general (MacDonald-Paterson) resigned. Dickson thought the tax, levied as it was only on freehold and not on leasehold, was a "class tax with a vengeance".

In the cabinet reshuffle on 17 August, Griffith became treasurer, and W. H. Wilson entered as postmaster-general. On 30 August, H. Jordan became secretary for public lands, replacing Dutton, who shifted to public works,
mines and railways. Griffith was faced with a "great dearth of fit men... for office". But when the Legislative Assembly met, his weakened government survived a critical vote.

In the last months of 1887, Griffith sought for answers to his increasing problems. Ironically, as treasurer, he had to deal directly with Drury and the Queensland National Bank, rather than with the Royal Bank, which the Liberals had launched in 1886. Drury suggested Griffith borrow another million pounds, which the Queensland National bank was prepared to back, and also advised Griffith "to issue Treasury Bills instead of piling on increased taxation".

Financial difficulties also intensified Griffith’s other, constant, problems. In 1887, Chinese royal commissioners visiting Australia met with Griffith on 25 and 26 July. Griffith was asked by the anti-Chinese leagues to put their views before the commissioners, but he only assured them that "the Govt will not fail to point out to the Commissioners on their arrival the public opinion of the Colony on the subject". Neither did he make any comment in October 1887 when the anti-Chinese leagues asked his government to legislate to end Chinese migration.

Public opinion was not unanimously against the Chinese. When the Clermont goldfield was extended, the warden ordered all Chinese to leave before 1 August 1887. A petition signed by seventy-three Europeans from Clermont (including solicitors, graziers, publicans, storekeepers, miners, labourers, and carriers) urged that the Chinese miners (many of whom had been there for ten years) should be allowed to stay, and argued that the "new" field was only an extension of the old. Griffith was unsympathetic, on legal grounds: "I think that the action of the Govt by the Warden was strictly in accordance with the law". His view gained support when the town council passed a resolution stating that the petition did not represent the views of the majority of Clermont’s residents.

The difficulties of controlling Chinese-European relationships in the colony was shown clearly in the events of 1887 on the Russell River goldfield in the far north. Christy Palmerston had discovered gold there in November 1886, and a rush of European miners followed. But the inhospitable country and problem of getting supplies soon drove them out. Palmerston offered to protect Chinese from the Aboriginals at one pound a head, and three Chinese business men paid thirty pounds for a party of their countrymen. They did not obtain much gold, but they were followed by about two hundred others, and Palmerston exacted a pound from each. Some were assaulted by Palmerston or by his body of armed Aboriginals. The police magistrate at Geraldton charged him with assault and robbery under arms, but failed to gain a conviction. The case was brought to the government’s attention; it decided it could take "no action".

In an 1888 report, Griffith opposed Chinese immigration partly on economic grounds: "owing to their habits of life, the cost of subsistence is to them very much less than to Europeans living in accordance with European habits, the effect of their unrestricted competition would undoubtedly be to materially lower wages and reduce the standard of comfort of the European artisan and labourer". But he stated that "the insuperable objection... is the fact that they cannot be admitted to an equal share in the political and social institutions of the Colony". He stressed national
differences, rather than a hierarchy of races: "the form of civilization exist­ing in the Chinese Empire, although of a complicated and in many respects marvellous character, is essentially different from the European civilization which at present prevails in Australia, and which I hold to be essential to the future welfare of the Australian Continent to preserve". If an "alien race occupying an inferior position" were allowed to remain, it "would probably necessitate a radical change in our political institutions, and entirely alter the future history and development of Australia". He believed that there was "no rule, either of intercolonial law or comity, which requires one nation to admit within its border, against its will, the subjects of another", and hoped that the British government would support the Australian colonists in discouraging and, if possible, forbidding the emigration of Chinese to Australasia.28 Griffith was consistent on the Chinese question, at least since his dispute with governor Cairns in 1876.

The scandal of the native police continued. The *Carpentaria Times* of 22 November 1887 reported "diabolical slaughter" of Aboriginals by native police. An enquiry aboard the *Vigilant* revealed the shocking details. At least three, possibly six, Aboriginals had been killed, almost certainly by native police, and their bodies removed. It seemed likely that a constable in charge of the troopers and a sub-inspector had removed the bodies, hoping to keep the incident quiet. Griffith ordered that the troopers be removed from the area, after his attorney-general, Arthur Rutledge, con­cluded that the Aboriginals had been shot by native troopers.29

In 1887 and 1888, Moreton, the colonial secretary, dealt with most remission cases. Usually he followed Griffith's earlier decisions. In the month Griffith left office, the premier recommended remission in a case that well illustrated how the law could serve justice. An illegitimate boy, abandoned by his mother in an Aboriginal's camp at Nerang, was adopted by an Aboriginal woman and raised among the Aboriginals. He married an Aboriginal by their custom, and was working on the Eidsvold goldfield when a white man took his wife and forced her to prostitute herself. The husband, encouraged by some fifty miners, burned the abductor's tent. He was found guilty, but the jury made a strong recommendation for mercy.30

Most gaol matters, in 1887 and 1888 were dealt with by Moreton as colonial secretary, although Griffith sometimes intervened as, for instance, when the Salvation Army wrote to him directly as chief secretary, seeking similar access to prisoners as it had in the southern colonies. Griffith min­uted, "I am fully aware of the good work done by the S.A. in the neigh­bouring Colonies and the Govt will be very glad to grant similar facilities to those given them there in connection with Prisons and discharged pris­oners".31 Because Griffith continued to investigate such details, he became increasingly aware of the problems of the underprivileged in Queensland society.

When the Fifth Intercolonial Trades Union Congress met in Brisbane in March 1888, Griffith allowed them the use of the government steamer *Lucinda* to entertain delegates. Although twenty-nine Queensland unions and labour associations were represented at this congress, the labour movement was by no means strongly established. The Omnibus and Tram­way Employees Union collapsed because, as its secretary reported, its members were "afraid that their names would get to the ears of their Employers and that they would therefore lose their work".32
Intercolonial governmental cooperation seemed to be at its lowest ebb after the London conference. It had revealed the divisions between the delegates, no clear leader had emerged, and the charges and counter-charges of "British imperialist" and "Australian nationalist" prevented a unified approach to most questions. Further rifts developed when Parkes proposed renaming New South Wales "Australia", though the issue was to be little more than a "nine days' wonder". Within a month of Parkes's introducing his controversial bill, the suggestion was dropped.

The Federal Council met against this dismal background in Hobart in January 1888, and this time Griffith, in fitting recognition of his continuing support of its value, was elected president. Questions of fisheries, quarantine, and Chinese migration were discussed.

Griffith found difficulties in carrying out the promises he had made at the Colonial Conference. The New Hebrides issue was apparently dormant. Fysh, in congratulating Griffith for what he called "your New Guinea Bill", reported he hoped to persuade the Tasmanian parliament to continue its contribution. Speculators and explorers were anxious for a more stable government than a protectorate. Everill had approached Griffith in London with a request for 500,000 acres. Theodore Bevan, who in 1887 had made his fourth journey up the Kikori and Purari Rivers under the auspices of the trading firm, Burns Philp, sought government aid for further exploration. He was given the services of a surveyor and the use of a ship, the *Albatross*, to tow his steam launch across to New Guinea.

Griffith's ministerial crisis with Dickson and MacDonald-Paterson caused a brief delay in submitting a New Guinea bill to the Queensland parliament, though by 20 October it was through parliament, despite Griffith's problems in obtaining even a reply from Parkes of New South Wales to enquiries about that colony's intentions. Griffith was embarrassed for his and Queensland's "honour". He complained through B. R. Wise, Parkes's attorney-general, who blamed the premier's personal views for the delay.

In London, Holland and Herbert both wholly "absolved" Griffith from "bad faith" in fulfilling conference promises, but Herbert was becoming impatient:

"I think Sir Samuel Griffith understands pretty well how far he can go in the way of amendments without raising serious objections here. The best amendment might be a reconsideration of the whole policy of annexing this undesirable territory in its entirety. Perhaps New South Wales is disposed, like South Australia, to question the profitableness of the investment."

Musgrave, in telegraphing the news that Queensland had passed the bill, advised delaying action until his despatch of 20 October had been received. This despatch reiterated Musgrave's concern at the extent of control given to Queensland. Not until February 1888 was the agent-general informed that the Letters Patent and instructions had been sent to Queensland.

Before the Colonial Office would announce sovereignty over New Guinea, it required confirmation of the guarantee of £15,000 a year, which Griffith gave.

Griffith was to face tremendous opposition in Queensland to passing the necessary legislation for contributing to naval defence costs (and it was the
last of the colonies to do so]. When he introduced a bill in late 1887 in order to fulfil his promises at the conference, he was "much embarrassed" by the extent of the hostility to the idea of giving any financial help to Britain. He thought of offering his resignation, but instead withdrew the bill after his agent-general reassured him that the Colonial Office accepted that he had acted in good faith on the matter. He was flattered when Tryon wrote to him:

> It must be recognised [as I openly and proudly do] by all who are acquainted with the history of the naval Bill that you, first of all men, did most to bring all the colonies to pull together in this important question of defence.*

Griffith had shown "generous forbearance" (the phrase was Tryon's) in another crisis involving the Queensland naval brigade. Behind it lay Admiralty objections to planned transfer of its officers to colonial ships, implying thereby that colonial service was inferior. The Colonial Office was more alert to the political advantages of "lending a succession of active list officers to the Colonies".* The issue had been debated at the Colonial Conference. However, when Griffith later sought transferral of a serving officer to the Gayundah, the Admiralty found it could spare only a retired officer, despite strong Colonial Office protests. Griffith avoided further conflict in October by advising it was "not at present intended to fill vacant office".*

Perhaps Griffith's decision reflected some disquiet about the reputedly superior British officers. Lieutenant Hesketh was court-martialled for theft while serving on the Gayundah.* Captain Wright, of the same ship, was an undischarged bankrupt who showed similar disregard for mere colonial money. The Queensland auditor-general discovered on 19 September 1887 that Wright had exceeded the financial limits imposed by the Queensland government by drawing cheques amounting to £189.14.1 for travelling expenses and entertainment costs, and had employed members of the Gayundah's crew at his private residence. A judgment had also been entered against him for failing to pay £13.3.6 for the hire of a horse. He had subsequently paid the charge from the public account.

Griffith asked for Wright's resignation; he refused to give it. Griffith then reminded him that, by Queensland public service rules, he could have discharged Wright when he learned of Wright's earlier bankruptcy, but had not done so because Wright had told him his difficulties were temporary. Griffith gave the captain a few days to consider. Angry letters were exchanged until Griffith, mercifully, decided to allow him to retain his appointment until the end of 1888, subject to being discharged as a bankrupt and refunding £165, part of the amount owing the Queensland Treasury. Griffith was sure that he had retained the power to end Wright's appointment as senior naval officer in the Queensland Naval brigade, even if the Gayundah had been accepted as part of the Royal Navy.* Musgrave, however, could find no precedent for the dismissal in similar circumstances of an officer commandng a ship, and in his opinion Wright did not have to be dismissed.*

During the dispute Wright objected to Walter Drake's being appointed by Queensland as first lieutenant on board the Gayundah. Wright argued that all instructions had to be given through the senior naval officer.
Griffith on 4 November minuted "no reply", but Wright insisted on his powers, formally installing Drake as senior lieutenant of the Gayundah. 46

The disputes with Wright led Griffith to have second thoughts about the earlier trial of Hesketh, in which Queensland’s transfer of jurisdiction to Tryon in Sydney had suggested that Queensland did not in fact have power over the officers of the Gayundah. The Admiralty had not confirmed Hesketh’s dismissal, presumably because it had been recommended by a colonial tribunal, but had been asked to do so by Garrick on 14 December. Griffith now contacted Garrick in the hopes of having the sentence quashed. Garrick replied in February 1888:

It is of course unfortunate that we should have been so importunate in pressing for the Court Martial. Immediately upon receiving the tel. about delaying confirmation of the sentence I wrote to the Colonial Office to influence the Admiralty to delay . . . Admiral Sir Anthony Hoskins has an angry down upon Wright and . . . would give him nothing if he left us, and that you were right in the course you then thought of taking with him. 47

Another of Griffith’s perennial problems — separation within the Colony — was not dead, only dormant, in 1887. Griffith hoped to allay protests with a scheme for financial decentralisation through Brisbane, Rockhampton and Townsville. However, the proposal, which included regional allocation of customs, was too controversial. Supporters feared the encouragement thereby given to a district to “trade outside the colony”, Dickson opposed it in cabinet, and the Legislative Assembly failed to pass it. 48

Elections were due in 1888, and Griffith, hoping to improve his chances, introduced a redistribution act, which was passed in November 1887. It increased the size of the lower house from fifty-five to seventy-two members, and gave more seats to the towns. 49

Parliament was prorogued on 9 December 1887, and electioneering began almost immediately. On his northern tour during December and January, Griffith sought continued support, and he resumed his efforts after returning from the Federal Council. The manifesto to electors, drafted on 18 February, referred directly to labour problems:

the relations between Labour and Capital constitute one of the great difficulties of the day. I look to the recognition of this principle that a share of the profits of productive labour belongs of right to the labourer as of the greatest importance in the future adjustment of those relations.

More generally, he asserted that

the great problem of this age is not how to accumulate wealth, but how to secure its more equitable distribution . . . it is our duty to use every effort to prevent the creation in this new land of such terrible inequalities of condition as are found in Europe, and even in the United States of America. 50

Griffith’s words seem sincere and go well beyond what was needed to gain working-class votes, though he was well aware of the importance of these votes, and was prepared to bid for them. Thus when Hinchcliffe suggested that more workers would be able to vote if the polls closed at 6 p.m. instead of 4 p.m., Griffith was “obliged for the suggestion to which I will endeavour to give effect as far as practicable”. He extended some polls to 6 p.m. after further requests from the Trades and Labour Council. 51
The electoral rolls were watched carefully by both sides. McIlwraith complained in a telegram to Griffith in September 1887 that he had been unable to obtain a copy of the rolls, or get new claim forms for the Stanley electorate. Bulcock paid close attention to the rolls, trying to ensure that all Liberal sympathisers were included, and Griffith sent a detailed circular on enrolment methods to all registrars in November 1887.\footnote{52}

The 1888 election saw the first endorsed Labor candidates: the Brisbane Trades and Labour Council nominated four candidates, who stood for the suburban electorates of Toombul, Toowong, Fortitude Valley and Woolloongabba. All were defeated. A radical candidate lost in Burke, and two others who claimed to be Labor candidates were defeated in Charters Towers and Carnarvon. The first success came in Bundamba, where Thomas Glassey won after a close three-cornered fight. Glassey had been backed by the Miners’ Association, and when he entered the House he gave his support to Griffith.\footnote{53}

In contrast with the 1883 election, Griffith faced very strong opposition in the two-man seat of North Brisbane. McIlwraith had transferred from his previous seat of Mulgrave for a direct confrontation with his greatest rival. Brookes stood again with Griffith for the Liberals, and the fourth candidate (who later withdrew) was N. W. Raven, a protectionist the Brisbane \textit{Courier} described as the working man's candidate.

The \textit{Courier}, always hostile to Griffith, claimed that the two-hour speech he gave on 5 April was lukewarmly received:

he lacks the necessary warmth of rhetorical effort to stir a crowd. And yet in the earlier part of his deliverance he strove to infuse a considerable amount of declamatory fire into his sentences . . . Towards the end he dropped into a discursive, argumentative style which may be admirable in courts but fails in effect in a great political gathering.\footnote{54}

Griffith, however, described it as an “immense and enthusiastic meeting”. The \textit{Telegraph} sympathetically reported his speech, which was a defence of his premiership as well as a catalogue of his views on current issues. These, besides such much debated questions as coloured labour, Chinese immigration, the naval defence bill and separation, included support for increased customs duties to increase production and cause “a great incursion of property, not only to the producers but to the whole colony”. More specifically, he urged that a share of “the profits of productive labour belongs of right to the labourer”. He concluded by supporting the establishment of a university in Brisbane which would “not only raise the standard of intellectual culture throughout the colony, but be of the utmost practical advantage to all persons engaged in industrial pursuits”.\footnote{55} McIlwraith, who had opened his campaign on 16 March, predictably opposed most of Griffith’s arguments.

Griffith worked hard during the campaign. He spoke at Rockhampton and other central Queensland towns between 7 and 18 March; at McMaster’s meeting in Parliament Hall on 16 April; at Ipswich on 17 April; at Maryborough and nearby towns between 23 and 25 April; at South Brisbane on 28 April; at Brookes’s meeting in the \textit{Courier} Hall on 30 April; at Caxton Street on 2 May; at Toowoomba on 3 May; and at the \textit{Courier} Hall on 4 May.\footnote{56}
At the same time that he was electioneering, he was trying to solve another Chinese crisis. The Chinese at Clermont protested to Griffith when they heard rumours that they were to be removed from the town. He tried to be reassuring: "the Govt will not have recourse to any harsh or unjust measures towards the Chinese or any other subjects of the Crown in Q but it is their duty to see that the law of the Colony is observed". A public meeting in Clermont in May 1888 condemned the warden, Morey, for giving free rations to forty Chinese, as not all of them were in an improvident state. Griffith, typically, asked for a report from Morey, who said he had given a week's rations only to destitute Chinese. Griffith decided, "no further issue of rations to Chinese to be made without express authority". At a somewhat hilarious public meeting, Morey defended himself against the charges.

One speaker at the meeting placed "the whole blame on the shoulders" of Griffith — because he had delayed moving the Chinese until just before a general election. There seems to be some substance in this charge, insofar as in Croydon similar attempts were made to remove "all Chinese Asiatic and African aliens not in authorised holdings" before the tenth of May. These steps had followed a huge open-air meeting of the anti-Chinese league of Croydon on 16 April at which the participants threatened that if the government did not remove the Chinese within a fortnight, "the people will rise en masse" to remove them "without further warning to the Government". Griffith replied that his government could not, without the sanction of the law undertake the task of ejecting the Chinese from the Gold Field. All they can do is to prevent them from working in the mines and further settling in the Field. Full instructions have already been given for this purpose: [on 11 April Griffith had advised the warden at Croydon not to issue "any Mining Rights or Business Licences to Chinese, or entertain any application from them for Market Garden Leases"] I hope that in any action the people may take they will not do anything to affect the reputation of Queenslanders as law-abiding people.

The explosive situation at Croydon was intensified by the fear of leprosy: the Croydon branch of the Australasian Miners' Association wanted all Chinese to be removed because there was one Chinese leper on the goldfield. Protests came from the Chinese, especially from those who were naturalised and had been refused business licences, and the warden explained that "it was the hoardes [sic] of incoming Chinese as waiters cooks milkmen poultry and egg sellers interfering with European labour" that had sparked the indignation meetings. He swore in twenty special constables and warned the locals against "illegally interfering with the Chinese". A petition to the police magistrate warned that "any tampering" with the decision to remove all the Chinese ("whether from S. W. Griffith or any other") could only lead to disorder and most probably bloodshed. Griffith approved the warnings of the magistrates and the appointment of the special constables as "very judicious". There was no bloodshed, the specials were discharged on 2 June, and the leper returned to Cooktown.

Some of the Chinese who left Clermont and reached Rockhampton were given passes by the clerk of petty sessions, ostensibly to collect their tools. Griffith suspected political motives: "I do not consider this explanation at all satisfactory. Mr Lukin was fully aware of the circumstances under
which these Chinese were sent from Clermont and I find it difficult to acquit him of a wish to embarrass the Govt". Eventually, however, Griffith accepted Lukin’s explanation that he returned them temporarily to Clermont to save the government from having to make an embarrassing decision.58

Griffith ran a distant second to Mcllwraith in the voting on 5 May 1888: the figures for North Brisbane were 1762 (45 percent) to 1129 (29 per cent) with Brookes gaining 1018 (26 per cent). In Queensland as a whole, Mcllwraith’s Nationalist party defeated Griffith’s by 46 members to 26. Only in Brisbane (10:5) did Griffith retain a majority of seats. He found various reasons for his defeat, ranging from “disloyal financial organisations” to “hatred of England”: others blamed the “combination of Irish, Northern Separationists and conservatives”, but saw his eclipse as being temporary.59

Griffith was to be in Opposition for only twenty-six months. In August 1890, he became premier for the second time. His treasurer was Mcllwraith, a Griffilwraith alliance that would have seemed incredible during the bitter election fight of 1888.

The Nationalist government had not been stable. During a parliamentary crisis in September 1888, Griffith was asked if he was prepared to form a government, and as early as March 1889 there were hints that he might join a conservative coalition (which became more likely as the Nationalist party split).60 The replacement of Mcllwraith as premier by Morehead in November 1888 was attributed mainly to Mcllwraith’s ill health, but strains in the party were becoming obvious. On 17 September 1889 Mcllwraith [who had been minister without office] resigned “in a huff” after attacking Morehead, Pattison and Perkins. Following yet another crisis two months later, Mcllwraith was again consulted as to the possibility of his forming a ministry.61

Griffith expanded his 1888 election pro-labour statements in an article on “Wealth and Want” written in December especially for the editor of Boomerang, William Lane. In it, he attacked unrestricted capitalism as the cause of “sweating”, as allowing the complete domination of the weak by the strong. Such competition, he said, was not really free. One of the principal functions of government was “to protect the weak against the strong, and to secure to every man real freedom. And it is only the State, i.e. the community in the aggregate, that can enforce the rule of freedom”62.

Griffith’s diary records that he had finished reading Karl Marx’s Das Kapital a few days before writing the article. Later, he read Dawson’s German Socialism and Bellamy’s Looking Backward.

The Boomerang article was revised and reprinted as “The Distribution of Wealth” in the Sydney Centennial magazine of July 1889. While Alfred Stephen described Griffith’s ideas as “having a smack of communism”, Lane urged him to become the leader of Australian radicalism: “What Pericles was to Athens and to Greece such a leader could be to Australia”. Griffith sent copies of the articles to his friends, with letters that reiterated his belief that action by the State was “the only hope of averting a terrible social upheaval and revolution”.63

In April 1889, Griffith introduced from the Opposition an “eight hours” bill, which brought him the commendation of the Townsville branch of the
Federated Wharf Labourers' Union but the bill was defeated. In July 1890, he introduced two bills which he called "the elementary property law of Queensland", the first being a declaratory statement of natural law, the second setting out ways of enforcing these principles. His first principle read:

all persons are by natural law, equally entitled to the right of life, and to the right of freedom for the exercise of their faculties; and no person has, by natural law, any right superior to the right of any other person in this respect.

His final principle declared:

It is the duty of the state to make provision by positive law for securing the proper distribution of the products of labour in accordance with the principles hereby declared.

Three weeks after he introduced these bills, Griffith took office with McIlwraith, who quite clearly had no sympathy with such ideas. As he had been negotiating with McIlwraith well before July 1890, the question arises as to the sincerity of this legislation. Had he been running incompatible lines in the hope that one or the other would restore his political power?

The militancy of the labour movement was undoubtedly a factor in bringing the erstwhile foes together. In March 1890, the first issue of the Worker had appeared; in May, Henry George had visited Brisbane; and in the same month, wool shorn at Jondaryan by non-union labour was held up by carriers and wharf-labourers. Then the Australian Labour Federation secured, on behalf of the Queensland Shearers' Union and the Queensland Labourers' Union, the promise to employ only union labour.

Buzacott, the editor of the Brisbane Courier was Griffith's and McIlwraith's go-between. He was disturbed by the challenges to the established order from the labour movement and by the continuing financial crisis. Buzacott began discussions on 9 June, stressing the need for firm government to restore finances and "to crush out the log-rolling that has vitiated party government".

When parliament met on 24 June, McIlwraith did not immediately move a censure motion. But three days after Griffith introduced his elementary property law, he records a consultation with McIlwraith. After the government narrowly survived a division (35 to 33) on a proposed property tax, the ministry resigned on 7 August 1890 and the governor sent for Griffith.

While in Opposition, between June 1888 and August 1890, Griffith appeared in twenty-four Supreme Court cases. This number was slightly under his overall average, attributable to such factors as his continued parliamentary duties, the increased cost of his services, and his absences — on holiday in the Pacific visiting New Caledonia and Fiji between 30 June and 31 July 1888; at the Federal Council early in 1889; in Perth in January 1890; at the Federation conference in February 1890.

The cases were as varied as ever, representing many legal categories: practice, patent, probate, property, partnerships, contracts, insolvency, divorce, torts, constitutional [including the limits of local government authority], as well as decisions on Stamp Duties, local options and Gold Fields Acts.

Griffith appeared twice for the Mount Morgan directors. On the first
occasion, a miner had applied for a lease over land that included land to which the directors, T. S. Hall and others, had water rights. Had the miner the legal right to mine underneath Hall’s reservoir? Griffith argued that under the Goldfields Act, holders of miners’ rights had to give their consent before any lease could be granted to any other person, and that this applied to land to which they held water rights. Harding agreed.70

Griffith’s final appearance for the company was in 1889, in a case that dragged on from August to December. He successfully defended the company against a claim for a share in the ownership of the mine by Meyenberg, manager of the mine’s crushing battery from 1883 to 1887. Meyenberg alleged that, when he had wanted to leave the mine, the present owners had persuaded him to stay with the promise that when they bought out the Morgans, he would be given part of their share. Meyenberg’s strongest evidence was an entry in his diary on 2 May 1884: ‘‘T. S. Hall promised me one-eighth in one of the Morgan’s shares’’. The three Morgans were duly bought out, and Meyenberg was now claiming a proportion of the allotment of 14,584 shares. Griffith’s defence was primarily a denial of the agreement, or, failing that, a reliance on the Statute of Frauds: to be enforceable any agreement that related to realty must be in writing.71

In a case under the Licensing Act, Griffith appeared on the side that would have had his father’s support. In a local option poll held in Ipswich on 25 September 1888, the majority had favoured reducing the number of hotels to ten. The justices of the Licensing Board refused to act on the poll; instead they granted licences to thirteen publicans. The justices rejected the poll because they considered it defective: notices as required by statute had not been posted at the doors of all schoolhouses, post offices and railway stations in the area. Griffith argued that the posting of these notices did not affect the jurisdiction of the licensing authority, and that they were bound to obey the result of the poll. Lilley agreed with Griffith. Court writs were issued to quash the licences, and to make the justices renumber them and issue only ten.72

Griffith argued successfully for a solicitor’s right to charge a goldmining company for each of fifty-five leases, even though each one was on the same printed form. The opposing counsel argued that the solicitor’s skill and responsibility had been amply allowed for by payment for one lease. Griffith maintained that the title of each lease had to be investigated, and while nobody supposed that the solicitor drew out each conveyance over again, but he took a form near what he wanted, and worked out the necessary alterations. He had to examine and compare it when made, however made, to see that it was correct. The principle of the order appealed for was wrong in allowing only for mechanical work.

Lilley agreed to defining ”drawing” as ”the application of the mind to the preparation of the deed, not the actual writing”.73

Paralleling the colony’s financial problems were Griffith’s own embarrassments. Although these were only in part caused by the debt on “Merthyr”, it became a symbol of his indebtedness. The mortgages of 1879 (for £2500) and 1880 (for £5000) had been raised by December 1881 to
£8000. He had bought land in Townsville and elsewhere, parts of which were also mortgaged. His diary records sales in the Kangaroo Point suburb of Brisbane in 1887. On 19 November 1887, he bought thirty-two parcels of land in Townsville, purchases totalling 138 acres 3 roods and 28 perches. He began selling some, mainly in small allotments (19 to 32 perches) from 1889 onwards, which provided some additional income. How much he made from his speculation is unknown; prices of the allotments varied and over 60 acres of the land was still unsold at his death.*

Griffith's appearance for the Mount Morgan directors in 1889 helped its brief boom in Australia and overseas. In 1889, about a million pounds' worth of Mount Morgan shares were reported to have been transferred to London, where dealings were highlighted by Rothschilds purchasing 20,000 shares for £170,000. By this time the mine was being called the "richest gold mine in the world". Prices, however, drifted downwards, and when it was announced that no December 1889 dividend would be paid, the price of shares slipped from £10 to £6.2.6d before recovering to £7 at the close of the year.

Griffith had bought a thousand shares, apparently for £4 each. By September 1889, his shares were valued at £15 each, giving a potential profit of £11,000. Griffith's broker gave him ambivalent advice when he considered selling them:

I was talking to William Pattison yesterday about Mount Morgan shares, and asked him if he thought it was advisable for you to sell yours — he said "don't do anything of the kind and what is more if at any time Sam wants to get rid of them I will take care he does not lose a shilling by them, of course he would give credit for dividends received and I will pay him the difference". He repeated this more than once and I think it exceedingly fair the offer is open for two years, but as the dividend does not do more than pay the interest on the purchase money if you would like to be relieved now, it may be as well.*

Mount Morgan shares continued to fall. Griffith sold, at a loss, some time before 1892. In retrospect, he must have wished he had held the shares, as by September 1900 Mount Morgan was the largest company in Australia, its shares valued at £4,900,000.

In the 1890s, Griffith needed money to meet his obligations and was forced to borrow £20,000 on the security of his properties, both "Merthyr" and others. It cost him almost double this amount to repay the debt (he borrowed at 6 per cent) and it took him more than twenty-seven years. The money was lent in April 1892 by T. S. Hall, the co-owner of Mt Morgan mines with Frederick Morgan. After Hall died, the debt was transferred to his executors, Mrs T. S. Hall and R. G. Casey.*

Although in Opposition, Griffith remained Queensland's delegate to the Federal Council, which had been expanded by the representation of South Australia. When it met in Hobart, from 29 January to 4 February 1889, it resolved to take steps to secure approval for an "increase in the number of representatives from each colony in contemplation of the early consideration of Australian Parliamentary Federation". As Griffith had always done on his way to and from Brisbane, he saw politicians and other dignitaries in Sydney and Melbourne. These included Parkes, Wise, Robertson and Dibbs in New South Wales, Gillies, Deakin and Service in Victoria. The possibility that the council might expand led to politicians in
New South Wales reconsidering their attitudes. To Parkes, in particular, federation was beginning to appear as the issue that might help him regain influence.

In October, 1889, Major-General Edwards presented his report on Australian defences, and Parkes telegraphed the premiers to suggest a conference on the proposed federation of the colonial forces under one command. Later in the month, Parkes visited Brisbane, seeing Griffith on 22 and 23 October. On his way back the following day, he stopped at Tenterfield, where he made his now famous speech urging a new start towards federation. This initiative led to the 1890 Melbourne conference which, retrospectively, can been seen to have ended any possibility that the Federal Council could develop. Both Parkes and Gillies wrote to Griffith to try and secure his support. Parkes on 5 December assured Griffith:

I have been very candid with you and I think very candid with the public. I fully believe the time has come. If the men in office do not see their way, the people will force them. Mr Gillies appears to me to be suffering from a chronic attack of Scotch caution and natural feebleness. Not only so, but Victoria is in an abnormal condition. She has stifled her spring of young life with this empirical remedy of protection . . . But in all the other colonies public life is more fresh . . . I shall be glad to see you in Sydney and I am sure I shall derive comfort and strength from seeing you.*

It is doubtful that the old man’s eloquence swayed Griffith, yet realistically he knew that the Federal Council could not work without New South Wales.

Griffith was largely responsible for postponing the 1890 meeting of the Federal Council, but he presided at its meeting in Hobart in January 1891, and again at its fifth meeting in 1893. By that time, however, few believed the Federal Council had a future.**

Griffith remained involved with New Guinea while in Opposition. Since 1887, Governor Musgrave had wanted a precise statement of how far he (as Queensland’s governor), or the Queensland government, could intervene in the administration of British New Guinea. He insisted on a ruling when he knew that McLlwraith was to replace Griffith. The Colonial Office opinion was that the administrator was to report to the governor of Queensland “as fully as the Governor of a Crown Colony is in the habit of doing to the Secretary of State” and that consultation should certainly occur on all important matters.*** ‘‘Consulting the governor’’ apparently meant that the governor had, in his turn, to obtain the opinion of his Executive Council whenever matters went beyond ordinary administration, and was to consult with the governments of New South Wales and Victoria through their governors.

Griffith, too, was concerned for the future of the new colony, and in his last days in office he tried to ensure that his proposed system would be maintained. He realised that Musgrave’s objections threatened the compromise that had taken so long to obtain, and that McLlwraith might try to replace MacGregor with an administrator who was more sympathetic to economic development. Griffith sent MacGregor an unofficial telegram hinting that he should leave for New Guinea.
MacGregor left Suva on 6 June, but his departure was not due to Griffith's surreptitious telegram, which could only have arrived the day before. MacGregor had become increasingly frustrated by the long delays, having heard nothing since the offer made to him in July 1887, which had been "subject to approval of Queensland [and] after declaration of sovereignty". Presumably he had decided to spend his leave in Australia rather than Scotland in the hope that personal influence could assist him.

MacGregor reached Brisbane in August, where he saw Griffith regularly. He found McLlwraith difficult, but bore "more insolence . . . than I have had to tolerate in the sum total of my previous existence" in the hope of introducing his ideas in the new colony. Musgrave was also difficult because of his unresolved doubts about the governmental arrangements.

The Colonial Office finally ordered the declaration of sovereignty, which MacGregor enacted at Port Moresby on 4 September 1888. On the same day, Musgrave had asked Griffith if he was prepared to form a government. McLlwraith had offered his resignation after a bitter clash with his governor over the pardoning of Benjamin Kitt, a man convicted for three years for stealing two pairs of boots. Many, including Musgrave, believed that the case was a dress-rehearsal for the release of the Hopeful prisoners. Griffith refused to replace McLlwraith as premier, especially as he agreed with McLlwraith that the governor should exercise the royal prerogative as his ministers advised.

Musgrave collapsed and died on 9 October 1888, a month after the Kitt crisis. At the state funeral, "side by side Sir T. McLlwraith and Sir S. W. Griffith walked in their homage of grief to the great departed". McLlwraith challenged the Colonial Office's choice of Sir Henry Blake to succeed Musgrave. The agitation following his opposition was sufficient to cause the Colonial Office to reconsider. Its dilemma was resolved when Blake tendered his resignation on 26 November. Sir Henry Norman was appointed governor in his place.

Griffith had joined McLlwraith in opposing Blake's appointment. He explained why to Lord Knutsford (Sir Henry Holland):

There is undoubtedly in existence in Australia a sentiment, to put it mildly, of want of regard for the Empire and a disposition to look for causes of difference with the Mother Country with the ultimate object of separating altogether . . . if left alone it will not I think be of much importance for a long time to come . . . . In my opinion it is from this point of view that the selection of governors is of most importance. If they are men of established reputation and of known good sense whose work and acts will commend themselves as prima facie worthy of unselfish attention and as probably right they can exercise the very greatest influence in keeping the Empire together. But if for any reason a Governor's personal influence should be small there is serious damage of what I call the disloyal sentiment gaining strength. This is certainly so in the present temper of Queensland.

These were the reasons which induced me to take the unusual course of offering to join Sir T. McLlwraith in objecting to the appointment of Sir. H. Blake. For no matter how high his real qualifications might be he was unknown to persons as a Governor and his appointment would have been probably received with a violently hostile demonstration . . . his power of influence for good would have been impaired if not destroyed from the beginning . . . . My regard for the unity of the Empire will I am sure be sufficient for troubling you with this letter.
Knutsford's private reply assured Griffith that his Imperial motives were appreciated, referring to his "loyal and valuable assistance" at the 1887 conference.

Griffith's demonstration of Imperial loyalty in the protracted New Guinea proceedings and the Blake crisis did not mean that he was not an Australian nationalist. The difference between him and McIlwraith rested in timing: Griffith supported the development of Australian nationalism within the Imperial framework, and — like most Australians — saw no incompatibility in holding twin loyalties. His support of the Federal Council arose from his strong devotion to the cause of Australian federalism.

Any Imperial representative who came to Australia met with Griffith. Thus when the Imperial Institute sent its assistant secretary, Sir Somers Vine, to Brisbane in 1889 he consulted with Griffith on several occasions. Griffith was kept in touch, too, with the plans for another colonial conference to continue the 1887 discussions. Garrick told him on 2 January 1890 of the hopes of the Imperial Federation League and Lord Carnarvon and the Earl of Rosebery for a second conference. Although Griffith's reactions to the Imperial Federationists are unrecorded, presumably as a realistic politician he could see the extreme difficulties of effective representation for the scattered colonies in any Imperial parliament.86

What is known is that Griffith had given some thought to leaving Queensland and entering British politics. A report to this effect was published in the Pall Mall Gazette, and Garrick questioned Griffith about its veracity.87

The use of Griffith's name is evidence of the recognition of his talents in Great Britain. The reality behind the rumour becomes clear from Griffith's personal letters. From 1889 onwards, he revealed much of his private self in correspondence with Jeanie Lucinda Musgrave, the widow of the governor. While in Queensland, the Musgraves and the Griffiths had found much in common. Musgrave was a trained lawyer, having been admitted to the Inner Temple in 1851; Jeanie came from a family of prominent American lawyers. Jeanie's 1888 diary reveals some of the shared experiences of the two families: they exchanged regular visits; in May on the Lucinda (named after her) "S. Griffith and ourselves [were] the whole party" on a four-day northern trip; on 23 June she visited Griffith's father; their children became companions; Griffith saw her immediately after Musgrave's sudden death; Julia and Lilley's wife were deputed by Brisbane's women to present a bust of Musgrave to her; Jeanie's later letters to Griffith always included mention of her three sons and one stepson, and she was sure that "Eveline [Griffith's daughter] will be interested in the news of her old playmates".88 There is no hint of any sexual intimacy between Griffith and Jeanie, although both were aware of the other's attractiveness. Indeed, Jeanie wrote to him of his marriage:

In thinking of you and your anxious and worried life, I often rejoice to remember the good understanding and accord that you have with Lady Griffith. Anthony and I often spoke with pleasure of the happy greeting that would pass between you when you met at Govt House receptions she coming from home and you from business, and our own experience had taught us that everything can be borne in the way of outside pressure or trial if only one has peace and happiness and confidential counsel at one's own hearth. And that perfect confidence is such
Lady Jeanie Lucinda Musgrave.
(Courtesy of the Oxley Memorial Library.)
Griffith appreciated these "kind and appropriate words... about Lady Griffith": agreeing that "whatever trouble I have had abroad, I have never had any at home".

The references to Griffith returning to England were from Jeanie’s correspondence. Her letter of 8 February 1890 gave her reactions to Griffith’s account of Queensland politics in his letter (unfortunately missing) of November 1889. She realised that the possibility of Griffith becoming premier again

prevents the hope of your coming to England at present, and I fancy that Lady Griffith will not come even to bring Eveline without you. I should like much to see you all at Harrow where possibly you may be sending Percy if not Llewellyn to school some day. Mt. Morgan can’t mean to come to grief so soon, and in spite of fallen shares, if it still pays dividends equal to last year, so you will not regret your thousand shares."

Two of the Musgrave boys, Arthur and Herbert, were at Harrow, and her discussion may have been influenced by her desire to reunite the two families. Yet the specific reference to thirteen-year-old Percy, the scholastically brighter of the two Griffith boys, suggests that the idea had originated with Griffith. It certainly is in accord with his pro-British feelings and his belief in the superiority of such British institutions as the public schools (which he wanted Brisbane Grammar School to emulate). It is quite conceivable that Griffith had contemplated entering British politics or administration, perhaps following another Queensland premier, Herbert, to the Colonial Office.

A factor that intervened was, ironically, nationalistic: the stimulus given to the federation movement by Parkes. Griffith’s reply to Jeanie on 24 April 1890 makes this clear: ‘‘I do not see any chance of taking Eveline there [to England] for some time to come. At the beginning of next year I expect the Federation Convention will occupy two or three months, and I must be there — if I am sent’’.91

Meanwhile Griffith maintained his interest in British New Guinea, where MacGregor was introducing policies of which he approved. MacGregor kept him informed in regular letters of his plans and his difficulties, especially with Queensland. Griffith in Opposition had to tread carefully; not until he became premier in August 1890 was he able to give direct assistance to his friend.92

The defeat of Griffith’s party at the elections of May 1888 had meant further postponement of the naval defence bill (which was not passed until 1891 when Griffith was again premier). Meanwhile, the Gayundah affair continued. On 3 October 1888 Captain Wright applied to the McIlwraith government for leave of absence until 31 December of that year, the date Griffith had fixed in 1887 for the end of Wright’s Queensland appointment. The Queensland government agreed, but directed him to hand over the ship and stores to First Lieutenant F. P Taylor, who had been appointed from the reserve list on 12 March 1888. Wright, for whom money was always a paramount desire, then applied for payment in advance of the
remainder of his salary. Understandably mistrustful, the government refused. On 23 October, the colonial secretary instructed Taylor to "at once take charge of the Gayundah", whereupon Wright told the Queensland government that this direction was illegal, because the Gayundah belonged to the Royal Navy, and he had Taylor placed under arrest when he attempted to take command.

The Queensland government had had enough of British arrogance. The Executive Council on 24 October dismissed Wright from his position as senior naval officer. The next stages approached comic opera. Wright prepared to sail the Gayundah to Sydney and place himself under the direct control of the nearest British officer, the commander of the Australian station. He requisitioned stores from the chandlers, ignoring Queensland paymasters. It was rumoured that the guns of the Gayundah were trained on government buildings and Parliament House and that Wright (upholding British naval rights against objectionable colonial upstarts) was quite prepared to fire.

The McLlwraith government ordered the commissioner of police to board the Gayundah, remove Wright, and hand over charge to Taylor. Wright left the next day, protesting to Morehead that his dismissal had been "unjust, unconstititutional and illegal".

Eventually the Colonial Office, having consulted the Admiralty and the law officers, confirmed Griffith's arguments that the Queensland government had legally dismissed Wright, and that the mere flying of the white ensign did not give the captain the immunity he claimed.93

Griffith's sustained interest in Queensland's military defence was formally recognised while he was in Opposition. At a military dinner on 8 November 1889, a fortnight after Parkes's Tenterfield speech, Drury proposed a toast to the "ministers of defence past and present". His words were a fitting memorial to Griffith's role between 1883 and 1888:

the extension of the Defence Act was ... owing to Sir Samuel Walker Griffith and that Act was the envy of the other colonies; they also know that in fair weather and foul ... [he] went among them at the encampments, and it was scarcely necessary to say more of the interest he had taken in the defences. They would not forget it.

Griffith in his reply argued that "the time had come when we should have a system of national defence". He linked this to the need for a federated "nation, holding fast to the British Crown, but still a nation, and speaking in a voice which would be listened to in the councils of the Empire."94
Compromises

Government will not assume the position of being allies of one class only

Griffith

Labour leaders saw Griffith's act of joining with McIlwraith as a denial of his professed radical ideas. It was a view that Labor-sympathising historians were to repeat. Glassey and the other Labor member of the Legislative Assembly (J. Hoolan had won a by-election in August 1890) were to vote against the McIlwraith, with increasing bitterness. Griffith's earlier plans for reform had all involved legislative action by the state. He did not believe that strikes were the way to correct injustices, but the conflict between capital and labour exemplified by the 1890s' strikes were to end any immediate chance of gradualism being acceptable. Within days of his becoming premier, his views were put to the test.

The marine officers' strike began in Sydney shortly before Griffith became premier. On his eighth day in office, 21 August, he made two significant decisions. The first accepted a suggestion from his postmaster-general that government ships (the Otter, Lucinda and if necessary the Gayundah) should replace commercial coasting vessels in carrying mail to northern Queensland ports. The second concerned a complaint from the secretary of the Australian Labour Federation that a customs officer had helped unload one of the blacklisted ships. He asked the government to 'recognise our right to fight our just quarrels without unfair opposition from any Government department'. Griffith denied responsibility, alleging that the man involved was a company employee who had inadvertently worn a customs officer's cap, but he also gave no undertaking that government officers would not be used as strike breakers.

To a proposal from the premier of South Australia for an intercolonial conference to plan united action 'to prevent the recurrence of similar disasters by means of the establishment of Courts of Conciliation', Griffith replied that he doubted 'the wisdom of proposing legislation . . . during the conflict'.

Griffith approved the placing of guards on arms and ammunition, and the appointment of special constables, but he resisted demands for more aggressive action, including martial law. By 12 September, sixteen arrests had been made for assaults on non-union workers. Griffith approved the sentencing of these unionists to two months' imprisonment with hard
labour, and upheld the one month's imprisonment imposed on the crew of the SS Archer. He also endorsed proceedings for criminal libel against the secretary of the Wharf Labourers' Union for allegedly defaming a director of the Brisbane Telegraph.

Griffith's cautious legalistic approach enabled him to assert that "the ordinary course of law" was being followed when the government denied relief to unionists. He justified the use of government ships on the grounds of maintaining essential services. He did, however, decide it was "unnecessary and undesirable" to use troops as special constables. Griffith claimed his government had not taken sides; the unions thought otherwise.6

The new premier's casuistry enabled him to claim his government was working with both employers and employees in setting up a Shops and Factories Commission, although of the ten commissioners only two (Thomas Glassey and William Lane) were labour representatives. The others were two Griffilwraith parliamentarians (B. B. Moreton and A. H. Barlow), a Liberal ex-member of parliament (J. J. Kingsbury), five employer representatives (including the president of the Brisbane Chamber of Commerce), and the press (W. K. Rose).7

Griffith was out of Queensland when the 1891 strike began. Union shearers refused to work on terms set by the pastoralists, who began recruiting non-union workers. Shearing began on only six stations — five under pastoralists' agreements, one on union terms. Griffith was in Brisbane only between 5 and 9 January, and 7 and 25 February. On 4 February, his colonial secretary, Tozer, promised a deputation from the pastoralists that the government would give energetic assistance in preventing breaches of the peace. On the same day, 200 non-union shearers left Melbourne, arriving at Rockhampton on 10 February and Clermont on 11 February. There they were confronted by union shearers who were congregating in two large camps, one at Clermont, the other at Barcaldine.

On 14 February, Griffith warned a deputation from the labour movement against their line of action, and six days later he decided to call out the defence forces to maintain law and order, telling Palmer (the acting administrator) "I think this will show we mean to keep order at any cost".8 He drafted a proclamation for Palmer's signature which outlawed assembly under arms for the purpose of intimidation and ordered the unionists to disperse and lay down their arms. Griffith admitted to Palmer that it "has of course no legal effect but it is not, I think, unusual for the head of the state in case of emergency to exercise his influence in such a manner".9 Both this proclamation (issued on 23 February) and the despatch of troops were seen by the labour movement as provocative. Although some unionists owned rifles, the camps were residential not military in their organisation. Of the five hundred or so men at Clermont, perhaps one-sixth were armed. To face these, Griffith sent 107 policemen, 140 special constables and 151 military men, all armed.

Griffith left for the Sydney Federation Convention on 25 February, and was away from Brisbane until 13 April. Those 47 days saw decisive developments in the strike. Griffith's replies to Tozer's frequent telegrams showed that the premier intended to retain control of the government's actions.10
On 28 February, Hinchcliffe telegraphed Mcllwraith (as resident head of the government and as a member of the Pastoralists' Association) asking him to arrange a conference without pre-conditions between the pastoralists and labour unions in the central districts to bring about "a speedy settlement of the present dispute". Mcllwraith, obviously without consulting his absent leader, and seemingly without consulting any other member of the government, replied:

I am extremely anxious for all concerned to see the work of the colony go on, and I will do all I can to aid your endeavour in that direction . . . but the way would be clearer if I knew whether there was a reasonable hope that such a conference would lead to the unions admitting freedom of contract.

In effect, he was rejecting the request for an unconditional conference. Hinchcliffe repeated his request, stating that it was:

the duty of the Government to exercise authority to secure justice for all classes before it enforces, with ball cartridge and Gatling guns, what are considered the arbitrary and unmeasurable claims of organised capitalism.

Mcllwraith replied the same day reaffirming the government's intention to uphold the law:

free labourers have made, of their own choice, legal contracts to do certain work on certain terms with which both sides to the contract are satisfied . . . unionists are determined that these men shall not work as they wish and determine further to illegally prevent them by force of arms. The Government defended the men working according to law.

Hinchcliffe replied:

We are not breaking the law. Those who introduced armed labourers from other colonies and those who threaten under the name of law to disperse with ball cartridge men whom the police authorities know are not breaking the law are the law-breakers . . . Disarm the free labourers, disarm the capitalists, leave the police alone to maintain the law, which has not yet been broken, and will not be if the true spirit of the law is adhered to. The Government already called on us [in Griffith's meeting with the deputation] to assist in maintaining the law, and we responded promptly and earnestly. What have you done? Wantonly displayed unnecessary force; persistently refused to assist with your influence the reasonable claims of the organised labour of the colony; wilfully evaded a fair request twice repeated; deliberately fostered the move of organised capitalism to break down unionism.11

Although Griffith would probably have disagreed with Mcllwraith, Tozer was most unsympathetic to Hinchcliffe: the picture he painted in the telegrams to Griffith was of a beleaguered government. Tozer wanted to prosecute the militant F. C. B. Vosper for an article in the Republican Tozer considered "seditious"; he accused Glassey of delivering an "inflammatory speech"; he cited the opinion of a local police magistrate, Ahern, that the "worst characters in Australia" were in the Clermont camps.12

Griffith eventually acceded to Tozer's repeated requests to prosecute Vosper. His decision was influenced by reports of a violent incident on 7 March in Clermont. He approved the use of ten police and twenty-five troops to go to the camp to arrest seven unionists, six of whom were committed for trial at Rockhampton.13
On 11 March the magistrate R. A. Ranking, urgently requested 90 more troops for Barcaldine as a safeguard "as yet no rioting there beyond rushing station upon arrival trains but so many congregating there and additional police not being available I consider prudent precaution send more troops to maintain order". Griffith approved, and 118 officers and men reached Barcaldine on 15 March. Five days earlier, an effigy of Griffith had been burned after a torchlight procession at a union camp near Hughenden. On 12 March, the wool shed at Maneroo station was burned down and on 15 March crowbars were placed on the line at Barcaldine in an unsuccessful attempt to wreck the train carrying the troops.

Tozer reported his fear that the arrival of more troops would "stimulate fanatical mob to breaches of law" and the pastoralists’ executive’s belief that the strikers’ "aggression increases daily and that unionists mean anarchy and leaders have little control. They ask for largely increased protection from Government". Griffith’s reply was terse:

> It is all very well for the pastoralists to demand largely increased protection from Government it appears to me that they wish to settle all the preliminaries of a war between classes to be carried on at the expense of the Government they must understand that the forces at disposal of Govt are limited and that Govt will not assume the position of being allies of one class only.

Magistrate Ahern at Barcaldine supported Griffith’s line when he reported that "if pastoralists agreed to meet shearers in conference all acts of intended aggression would be suspended pending final settlement". Tozer took a harder line:

> pastoralists have made no demand except to stop persons seriously offending against persons or property, only in restraining evil doers can we be considered allies. Entire public save agitators and fanatics support our actions and retrogression would simply mean handing over districts permanently to mob law.

Griffith was not prepared to accept Tozer’s suggestion that the police see telegrams sent by unionists, but agreed to station masters relaying the content of telegrams to the postmaster-general if there were indications of danger to public safety. Tozer was sure unionists knew what was in police telegrams. Griffith compromised by drawing up two new regulations: one authorised the postmaster-general to refuse telegrams in code or from any specified station; the other allowed telegraph stations to be closed for non-government business. The postmaster-general was empowered to refuse to send a telegram if he “reasonably suspected it to be intended to arrange for violence”, although Griffith agreed only reluctantly to this breach of the Telegraph Act.

Telegraph lines, including those linking Emerald and Clermont, were cut in the next few days at several places, presumably to hamper police and military sending messages.

Such actions and others, including an attempted derailment of a troop-carrying train, using a firmly chocked log seven feet long and sixteen inches thick, led to further condemnation of the strikers. The pastoralists’ council on 18 March refused to confer with the strikers unless freedom of contract was admitted and the strike ended. They warned that they would not employ unionists. The majority of the cabinet urged stronger measures. Hodgkinson, alone in cabinet, urged “strong representation to the Pastoralists as to the desirableness of an unfettered conference”.
On Saturday, 20 March, a special cabinet meeting decided unanimously that "the time has arrived for the adoption of more decided measures for the maintenance of law and order and the preservation of life". Preliminary preparations had been made to increase civil and military forces, of which the cabinet urged that Colonel French be authorised to assume control: "We intend that French with sufficient force should disperse camps where unionists refuse compliance and using force where necessary".

Griffith and McIlwraith met and "very fully and anxiously" considered the proposal before deciding to oppose their cabinet colleagues:

We do not think it practicable or expedient to disperse the camps by force. The assemblage of large numbers of men in camp is not unlawful in itself. We think the Government should still confine itself to the punishment of actual offences and protection of travellers and others against molestation. It is of course impossible for the Government to prevent occasional outrages in lonely places. The pastoralists who have deliberately adopted their policy must know this but we think that dispersing the camps under present circumstances would only intensify this danger. We fully appreciate the trouble and anxiety you have had and think you deserve the greatest credit as do your officers in the disturbed districts. We think you should continue on the same lines. The people of the towns in the interior who are giving their secret aid and sympathy to the disorderly persons must understand that they must help in their own protection as must the pastoralists with regard to prosecuting ringleaders.

Griffith then significantly changed from the plural "we" (McIlwraith and himself) to the singular pronoun, perhaps because the two men disagreed or perhaps because he was giving a legal opinion:

I think that there is ample evidence of conspiracy to intimidate and that some of the more prominent men should be brought up on this charge. I think that the exercise of this power with judicious use of the riot act will do all that is necessary at present. You must of course be careful to have sufficient force at any place where action is intended to be taken.

The telegram concluded with a repetition of the joint decision of the two leaders: "We do not however concur in sending Colonel French and think that the forces already called out are sufficient for all the work the Government ought to do".

The same morning, Griffith worked on official despatches sent to him from Brisbane, amongst which were the resolutions of the pastoralists' conference. Griffith condemned these strongly. "The following", he telegraphed Tozer,

is an expression of my individual opinion of which I should like the Pastoralists to be informed unofficially at present. I am of opinion that the Resolutions are most unwise and impolitic. They indicate a policy of exasperation calculated to alienate the sympathy of impartial observers, as they have gone far to alienate mine.

I think that the claim of the Unions that none but Unionists should work is absurd and can never be conceded but I think that the refusal of the Pastoralists to meet the Unionists and state their view to them in fair discussion is equally unreasonable and is in the existing state of things a most lamentable event the consequences of which it is difficult to foresee the end.

These two telegrams, one sent at 11.30 a.m. the other at 2 p.m. were
considered by the cabinet in Brisbane. Its reply, sent at 4.17 p.m. reiterated its earlier decision. "We fear that you are not able at the distance to sufficiently realise the gravity of the situation and the excited state of public anxiety". If Griffith were not prepared to endorse the cabinet decision, it wanted him "to return at once as the situation will not admit of temporising". When no reply had come by 7.40 p.m., Tozer sent another telegram. It advised that one magistrate believed the unionists planned to wreck every train carrying free labourers or troops; that there had been an intimidatory rush on police escorting shearers at Peak Downs; and concluded

it is a mistake to suppose that patience and leniency will have better effect than firm retribution. Unionists have had every consideration shown them without any effect . . . unless something active is done strike will last longer than any one supposed and get more serious.

Griffith had been at a picnic on Sydney harbour, so it was 7.28 p.m. before he and McIlwraith replied to the first cable. They remained firm in their advice, adding that, although Griffith could not leave Sydney, McIlwraith would leave on Monday or Thursday.

The cabinet had dispersed by the time this reply reached Brisbane, but Tozer at 10.40 p.m. assured his leaders "that none of us are acting under the passion of prevailing excitement". After restating his view of the dangers, he turned to the difference between the Brisbane and Sydney plans:

your proposal is to arrest leaders and if resisted then to use force. Our objections to this are that without leaders the remainder will become an uncontrollable mob of brutes devastating everywhere with no regard for life or property and that small comparatively military forces making these arrests will invite bloodshed. Your proposition equally assumes the offensive we consider ineffectively and with greater risk to life. We claim that our proposals are strictly within the law; these camps as now existing are clearly unlawful assemblies and all we propose to do is to combine both forces under one man French or anyone else and arrest a large number of ringleaders thereby practically breaking up the camps for want of organisation. These camps are the depots from which all conspiracies spring and I think a large military power would secure arrest of all rowdy prominent men without firing one shot and terminate concerted lawless acts more speedily.

Griffith replied from his luncheon party on the Lucinda the next day. Although he began by stating, "your proposals as contained in telegram of last night show little or no difference between us", it was clear that fundamental disagreements remained, especially about the rights of assembly. "I", reiterated Griffith,

am of opinion that camps are not of themselves unlawful assemblies and cannot be treated as such without an act of war unless they become rowdy or riotous. The men must exist somewhere. It must be remembered that the military are acting in aid of the civil power it must also be remembered that we cannot arrest and imprison hundreds of men. When we advised you to arrest ringleaders we meant the prominent rowdy men just as you can now but they must be arrested on warrants regularly issued. We agree with you that this will probably break up camps if our forces are strong enough. We must run no risk on that point. Do not forget the possibility of reprisals in Brisbane. The best mode of command concentration etc. are questions for you.
The telegram concluded by advising that McIlwraith would leave that night, a day earlier than anticipated.

Griffith deserves more credit than historians so far have given him for preventing the Queensland government from extreme action that might well have led to blood staining the wattle. The subsequent actions of Tozer in the 1894 strike suggest what could have happened; he introduced an act that drew from Charles Powers the comment, "I can find no coercion act amongst all the coercion acts of Ireland so coercive as this bill"; and his Instructions to Justices of the Peace and Police includes an order to shoot on sight any person whom the authorities suspected of carrying arms or being about to commit a felony. Firing, it continued, was to be effective. They were to pick on the leaders; to fire not over their heads, but straight at them, as firing over the heads of people might give confidence to the daring and guilty, while comparatively innocent persons in the rear might be injured.  

McIlwraith reached Brisbane on 24 March, and stayed there for eleven days, acting as the restraint on Tozer. Griffith sent no telegrams between 22 March and 6 April. McIlwraith was back at the Sydney convention on 6 April for its last four sitting days. Griffith left Sydney on the Lucinda, reaching Brisbane early on Monday 13 April.

A compromise policy framed from the exchange of telegrams on 21 and 22 March had been adopted. The civil magistrates, not military officers, led parties of civil and military forces in arresting ringleaders, but no action was taken to disperse the camps.

Tozer, in a telegram to Griffith, reported that cabinet had met and that "McIlwraith endorsed our action, increasing forces". Exactly how far McIlwraith had moved towards Tozer and his colleagues is uncertain. Indeed, a later telegram suggests some developments may have been kept from Griffith: "knowing amount of work imposed on you . . . will not worry you with voluminous details". On 31 March he was told that arrests totalled "about fifty most prominent rowdy characters", and soon there were "one thousand military now under arms", to supplement the regular police [at least two hundred] and special constables. Estimates of the number of strikers varied [up to as high as ten thousand] with the largest camps being at Barcaldine [up to a thousand] and Clermont [up to five hundred].

Tozer, on 27 March, drew the attention of magistrates and officers of police to an 1826 statute relating to conspiracy and intimidation which, although repealed in England, was still in force in Queensland. When the trials of the major ringleaders began, on 4 April, the Chief Justice granted bail to the Clermont rioters. Griffith, in his final telegram from Sydney, approved of Tozer's wish to re-arrest them.

Before Griffith left for Brisbane, he appeared as a witness at a New South Wales government royal commission on strikes. He answered 230 questions in a searching cross-examination of his ideas on labour relations. He was keenly conscious of his difficult position as premier of the colony most disturbed by the strike, and above all he wanted to conceal the differences in opinion within his cabinet. The Sydney Morning Herald correspondent discerned a vivid contrast between Griffith's role as the logical drafter of the constitution "ruthlessly rejecting everything that does not stand the
test of hard practical logic" and the "dreamer of dreams; shrinking from
the result of his own visionary conceptions ... as a study in psychology
the picture is an interesting one, exhibiting the Premier ... in a dual
character". Griffith's personal dilemma was the dilemma of all liberals.
Liberalism was being tested by the claims of the labour movement: the
bounds of liberty were being drawn by Griffith's cabinet, police, military
and judges as he was cross-examined in Sydney.

Questions concentrated on Griffith's elementary property bills. Griffith
deplored the buying and selling of labour, and the division of employers
and employees into hostile armies: "until the two parties recognise that
their interests are common ... there will be no end to these troubles". He
could not see the value of boards of arbitration and conciliation without
a fundamental change in the relations between employer and employed.
He expounded on his ideas of paying a "fair immediate recompense" for
labour, and of how workers could share in long-term profits and shares for
capital be estimated. He agreed that his scheme resembled that once used
in the Cornish mines (payments of an "immediate subsist" and a share in
the ultimate profit), and later compared it to the arrangements on whaling
ships.

Griffith's scheme provided for a "natural minimum wage" (defined as a
"sum ... sufficient to maintain the labourer and his family in a state of
health and reasonable comfort") but did not set out a "national" level. He
suggested averaging to determine rates for a bachelor and for a man with
twelve children, but refused to define an "average family" as "a man, wife
and three children", reiterating that "a state of health and reasonable com­
fort might be taken by a sort of rule of thumb until the thing had worked
itself out".

When asked what the colonies could do about strikes, he repeated his
earlier diagnosis: "as long as the present conception of the relations of
employers and employed continues, there will be strikes". The solution lay
in education to get rid of the erroneous concept. When asked directly
whether he advocated a violent revolution, Griffith replied strongly: "Cer­
tainly not, I have had enough of that on my hands for the last six weeks".
But when asked whether the present relationship between employers and
employees could persist, Griffith replied: "it cannot continue very much
longer without a revolution". Whenever he had been concerned in "labour
troubles", he had "found that it is the prevailing opinion that employers
and employed are two distinct sets of men".

Griffith agreed that it was not in the best interests of the community that
the Queensland strike should continue, and he claimed that he had done
his best "in various ways to bring about a settlement with both sides". To
the direct question, "Do you think that the chopping down of gates, burn­
ing of wool sheds and setting fire to the country that produces the feed
tends at all to separate the supporters of Unionism from the well
wishers?", Griffith responded: "Of course it does. Every honest man must
deprecate action of that sort".

Cooperation was certainly not being practised in Queensland while
Griffith was being cross-examined, and he enjoyed only a few peaceful
hours sailing northwards on the Lucinda before returning on 13 April to
take control of his government. He told Lucinda Musgrave after being back
in Brisbane for a week:
We have terrible trouble with the Shearers Strike, which has been going on for two months. We have 1200 troops in the field, and there are some thousands of unionists in camps, from Hughenden to Cunnamulla — an immense extent of country to patrol. The effect on industry and enterprise is terrible — as yet there is no sign of an end.\textsuperscript{32}

On 14 May, the army commandant, French, proposed regulations under the Defence Act that would have enabled troops “to take possession (by force if necessary) of whatever accommodation rations and forage” were required, provided they were paid for and were within the prescribed army scale. Griffith objected: “I cannot submit these Regulations for approval. I do not think that the Act authorises any such provision except in time of war. I have not considered them in detail”.\textsuperscript{33} French protested, but Griffith did not change his decision.

Griffith’s attitude hardened as the strike progressed. To resolutions from a Mount Cotton meeting praising the government for its action upon “the bush strike of lawless scoundrels”, Griffith replied that he was sure his government had “the sympathy of all law abiding citizens in... efforts to suppress violence and tyrannical disorder in the Western Districts”. He responded similarly to resolutions from a meeting of pastoralists at Deniliquin in southern New South Wales that praised his government for its “firm and patriotic action... in impartially maintaining law and order and the just rights of all classes”.\textsuperscript{34}

Griffith’s government was undoubtedly partisan during the strike, although Tozer, not Griffith himself, was implicated in supplying firearms for the pastoralists and assisting strikebreakers to reach country areas. However, Griffith was aware that increasing numbers of troops were being used by his government. By May, 75 officers and 1,179 men were scattered over 39 different posts in the interior. To the striking unionists, they were evidence that the government was siding with the pastoralists against them, a view that was strengthened at the subsequent trials. At the Supreme Court at Rockhampton, for example, Judge Harding found twelve men guilty of conspiracy (under the 1826 English statute) and sentenced them to three years’ imprisonment with hard labour.

On 14 June the strike was declared at an end, and by the end of that month, most of the unionists’ camps had broken up. Government rations were issued to relieve distress amongst the strikers, who by mid-July had all dispersed. However, Griffith refused Glassey’s request for a commission of enquiry into the strike.\textsuperscript{35}

In August 1891, Griffith introduced a Workingman’s Lien Bill, attempting to give wage-earners some protection for the payment of their wages. Macrossan had failed in three earlier attempts to have a similar bill passed and, although this bill passed the Legislative Assembly, it was defeated in the Legislative Council.\textsuperscript{36}

The government gave some assistance to the unemployed during 1891. Its immigration agent bought rations for families from funds provided for “provisions, light fuel and incidentals”, and similar relief was continued throughout Griffith’s administration. Thus three destitute selectors at Biggenden were given blankets and rations in December 1891 and March and May 1892, until Griffith decided they were to receive no more aid. In his last month of office, he approved of Douglas giving passages to destitute
miners on Thursday Island as "the circumstances were very exceptional . . . in the outlying port".37

Griffith was behind the plan to open in October 1891 a free government labour bureau. This followed the establishment of a bureau by the Australian Labour Federation, and the setting up of a Workers' Political Association with the goal of "work for all". However, paid government spies reported on the men applying for work at its bureau. When one of these implicated himself as a spy on Labor candidates, W. Parry-Okeden saw the dangers: "your last two communications are very foreign to the matter you had in hand; viz. making inquiries into cases of persons who registered at the Labour Bureau and of course you understand that I am in no way employing you except in the way arranged by Mr Brennan [the officer in charge of the bureau]".38

In his last year in politics, Griffith faced continuing labour questions, such as the one posed by the Ipswich and West Moreton Workers' Political Organization, which asked whether civil servants could become members. On the advice of the Civil Service Board that its officers could not take part in political affairs [except by voting], Griffith ruled against the request.39

A deputation from the unemployed saw Griffith on Saturday, 4 June 1892. They asked him to start productive works that would enable the unemployed to earn a decent living, as the relief system was "to the last degree degrading and humiliating". Griffith showed little sympathy. To find work for everyone was not the function of government. He had warned labour that wages must fall. To his claim that there was plenty of work in the country, the deputation replied that only low-paid jobs were available, which led Griffith to repeat: "It is no use discussing the rate of wages. I have already pointed out that the rate of wages was bound to fall".40

That afternoon, Griffith sailed on Moreton Bay, enjoying afternoon tea in the Lucinda with his fellow lawyer and minister, W. H. Wilson. After a relaxing weekend, these two met with their colleagues in cabinet on Monday to discuss a memorandum from Griffith:

It has been represented to the Govt. that many men at present without work are willing to take employment at such reasonable wages as may be offered. The Govt. have reason to believe that many persons would be willing to give employment to labourers at rates below those generally paid at present, if they could obtain labourers at such rates.

The Govt. will therefore be glad if any person willing to give such employment will communicate with the officer in charge of the Govt. Labour Bureau stating the number of men they are willing to employ and the wages that they are willing to pay. The Govt. confidently invite the assistance from private citizens for the purpose of dealing with a present difficulty.41

Ironically, it was the financial situation, and not the deputation of unemployed that convinced Griffith to support a bill allowing the private building of railways on the land grants principle. The deputation of unemployed had specifically mentioned such construction as providing more jobs. The bill was attacked violently in the assembly, especially by J. G. Drake and Powers, but in November parliament approved the construction of eleven lines.42

Unemployment reached its peak in 1893, the year Griffith left politics.
170 Samuel Walker Griffith

Manifestly Griffith’s government had not solved this acute problem. Indeed, Griffith was to break in 1892 his 1885 promise to end recruiting of Kanakas after 31 December 1890. He told the electors of North Brisbane on 13 August 1890 that his cabinet agreed that the “coloured labour question is settled”.43

When Griffith became premier again, in 1890, he had immediately resumed his close surveillance of labour vessels. For instance, six days after his appointment, he ruled that a government agent on the Nautilus should not be employed again as his “carelessness may have led to the tragedy” in which a recruiter “went mad and had to be shot”. Nine days later, he flatly rejected an appeal by another man: “the fact that . . . he was convicted and imprisoned renders any further enquiry unnecessary”.41

The premier’s northern trip of December 1890 in the Lucinda had been planned to gather information about the planters’ complaints. Facing competition from subsidised European beet sugar, and fearing that the South Australian market might become closed to them, they wanted the duty on imported sugar to be doubled, and pressure to be put on the other colonies to adopt a similar duty. Griffith refused their request.

On the labour problem, Griffith proved more sympathetic. As no Kanakas were to be brought in after the end of 1890, the sugar industry could only rely on this cheap labour until the expiry of the terms of those already in Queensland. Griffith asked Kanaka employers how they intended to replace them. The fifteen replies he received expressed a wide variety of opinions. J. Ewan Davidson, the manager of the Melbourne Mackay Sugar Co. Ltd., calculated it cost £80,000 to form a plantation capable of yielding 2,000 tons of sugar a year; after paying out for interest, wear and tear, rations, supplies and charges, the annual available surplus for 400 labourers would be £6,400 (£16 each a year, or 6/- a week). This figure he thought proved “the utter futility” of any scheme for British or European labour. But a small Yeppoon planter was sure “the central mill system will work well” in areas suited for European residents.45

On 13 February 1892 Griffith issued his infamous manifesto advocating the importation of Kanakas for a further ten years. On the same day he left Brisbane on the Lucinda for a northern and western tour which took him to Rockhampton, west to Longreach, Barcaldine and the Alice River settlement, and back to Bundaberg. Planters who in the 1880s drank to “Damn Sam Griffith” gave him a champagne reception.46

Griffith’s manifesto seems a frank statement of his dilemma. It opens with a reference to the depression and to the argument that a revived sugar industry would restore prosperity to Queensland. It continued:

while I am unable to attribute to this cause alone so much of the prevailing depression as some people are disposed to think, many other causes being apparent not only in Queensland but throughout the rest of Australia, I have arrived at the conclusion that it is the imperative duty of the Government, and perhaps more especially of myself, to whom rightly or wrongly much of the blame or credit for the existing state of things has been attributed, to review the present position, and to state plainly what we think is the right policy to be adopted.

Since 1885, he said, the system of large estates worked by gang labour had fallen into disfavour; it had been proved that sugar was a profitable crop
for small farmers, and that cane could be grown by white labour. However, there were too few Europeans able and willing to do the necessary work and the introduction of additional workmen had been strongly opposed. Labour spokesmen had argued that field labour was degrading, and they had denounced it except at rates of pay that the industry could not afford. The immediate prospects were that many of the mills (both the new central ones and those on the plantations) would have to be closed, which would reduce even further the productivity of the colony's sugar lands.

There were only two alternatives:

to do nothing and let the sugar industry slowly struggle on until the necessary European labour can be introduced and acclimatised . . . or to take some action to bridge over the interval . . . before the change of system can be brought about. This can only be done by making immediate provision for the supply of some labour which is at once available.

The only labour immediately available was Polynesian. If it were continued for a "definite but limited period of-say-ten-years" with adequate safeguards against abuses and protection from competition for white labourers in other occupations, Griffith believed that "in a few years the existing large plantations would be divided amongst small farmers, while large numbers of farms now held by selectors would be devoted to the cultivation of sugar-cane for sale to Central-Mills". He admitted that his argument was based on expediency: "There has never been so much distress and poverty in Australia".47

Griffith seems to have met more support than opposition, although his critics attacked him fiercely. In reply to the Presbyterian missionary George Paton, he stated:

I could not sit still and look calmly on at the ruin of hundreds and thousands of our own people, from want of labour to utilise the real resources of the country, when such labour is available, as I believe, without any moral wrong doing. This is the pass to which the insensate action of the labour party has brought us.48

Some people admitted they, like Griffith, had changed their minds. For instance, Theophilus Pugh, police magistrate at Bundaberg since 1887, admitted having before moving there "as great a 'down' on black labour — or nearly so — as 'Billy Brookes'; but the large experience I have had of the 'Kanaka', in my court and out of it, has completely altered my views with respect to that noble citizen". He was convinced that the Kanakas who had been in Queensland would never return kindly to their former island mode of life "the news of the revival of this labour will be welcomed more enthusiastically in the islands than even by the planters themselves".49

There was speculation in the Colonial Office:

Probably the Banks have warned him that the financial disturbance consequent on the ruin of the tropical planting interest was and would be so great as to compel him to reconsider his position.50

Norman, the governor, told the Colonial Office, "I concur in the EXPEDIENCY, I might indeed say the NECESSITY of the proposed measure", though he did not agree with Griffith that immigration could end after another ten years.51
Within two days of parliament meeting on 29 March, the Polynesian labour bill had been passed. Griffith drew up stringent regulations that went beyond those of 1884, and the Queensland government was to continue to exert strict control. In July 1892, it banned recruitment from Santa Cruz and Tonga islands in the New Hebrides, whose people were considered unsuitable for plantation work. The Colonial Office applauded the decision. Recruiting from any place or island within the German spheres of influence was stopped on the grounds of international "safety".

The Colonial Office continued to insist on conscientiously checking the details of each voyage, even if aware that this paper supervision was dependent on the accuracy of Queenslanders. London’s comments, received two months after a voyage, could have little practical effect, and in any case were often banal: "These desertions have a rather suspicious look, but probably do not signify much in the case of these childish and wayward natives".

In May 1892, Playford, the premier of South Australia, proposed an Australasian conference on black labour. South Australia wished to bring Indian labourers into its Northern Territory. Playford, in Townsville on 13 May on his way back from India, was alleged to have said that Polynesian labourers in Queensland were practically slaves. He later denied this statement, but it had already been published. Griffith could see no useful purpose in a meeting. When Playford argued that a conference could result in an intercolonial agreement, Griffith called a special cabinet meeting and then drafted a personal reply: "I am not aware of any instance in which a conference has considered matters involving contentious political questions upon which party feeling runs high in the several colonies and on which strong differences of opinion exist". Rather than promoting federation, such a conference would have a contrary effect. He doubted whether either the supporters or opponents of coloured labour in the interested colonies (South Australia, Western Australia and Queensland) would accept the opinions of such a conference, especially as the "representatives of the Colonies not immediately interested could have neither a full sense of responsibility nor sufficient information". He agreed that "the importance of the question is a reason for establishing a Federal authority", but not for holding a conference.

Fysh of Tasmania tried to persuade Griffith to modify this reply so "as to give South Australia good cause to re-enter the Federal Council". Playford challenged Griffith on historical grounds, claiming that the 1888 conference on the Chinese, almost a parallel case, had resulted in useful action. As well he queried the effect on federation; a refusal to discuss now might "necessitate the permanent denial to a federal parliament of the power to legislate on the coloured labour question". He added that Forrest for Western Australia had agreed to attend a conference.

Griffith was not convinced. Playford persisted in his hope for a conference, but on 17 June his ministry was defeated and the new premier did not pursue the topic.

When Griffith resigned in March 1893, no major abuses of the recruitment system had been reported, and he was still convinced that his new, stringent regulations were operating well. He had persuaded Flora Shaw,
Compromises 173

special correspondent for The Times, that the labourers were "well cared for". But the revival of the sugar industry, and Queensland's improving financial position, remained the main answer to his critics. Although Griffith expressed deep concern to Jeanie Musgrave on 20 November 1892 over his decision to leave politics, he showed no qualms about the labour trade: "The sugar industry here has been certainly set on its feet again by our action in renewing Kanaka immigration. I have felt no doubt on the wisdom of that action".58

On the separation issue, Griffith was more ambivalent. Within three weeks of his assuming office, twenty-eight members of the Legislative Assembly (eleven from the north, ten central, seven south) and three of the Legislative Council (two north, one central) wrote to the Colonial Office urging it to make a decision. The Colonial Office wanted more details and was wary of the effects on debts in Britain: "'The City' may be expected to resist vigorously the weakening of the Queensland securities which would result from any Separation, unless accompanied by a guarantee from Federated Australasia".59

Griffith's reply was to revive the idea of three provinces with separate legislatures, powers, and rights to raise and spend revenue. Macrossan moved for separation in the Legislative Assembly. An amendment proposed by Griffith to alter the power of the central legislature was defeated. Already deeply involved in the moves towards federation, Griffith argued that the creation of new colonies would place new obstacles and difficulties in the way of federation. At Macrossan's and Archer's request, he agreed to local autonomy in the southern, central and northern portions of the colony.

Griffith's detailed proposal was unsuccessfully raised in parliament in November 1890. In London, Garrick saw financial difficulties as the stumbling block, particularly in apportioning the colony's debt. The Colonial Office was more sympathetic to the requirement of a central legislature: "Such a system would of course lend itself more readily to a general federation of Australia than actual territorial separation would: and in so far would command support in the Impl. Palt. where broad principles would attract more than a host of detailed arguments".60

Finch-Hatton, the London representative of the northern separation movement, made it clear that he and his supporters totally rejected Griffith's proposal. Representatives of the banks added their objections, based on difficulties in apportioning the colony's debt. The executive of the Central Separation League would not comment on Griffith's proposals, as it still advocated separation.61

Griffith endeavoured to meet the objections, but he realised his scheme would be difficult to carry, especially if the constitution had to be changed, which would require a favourable two-thirds majority of both Houses. The death of Macrossan weakened the separationists, and then the twelve northern members, under Hume Black's leadership, approved Griffith's revised provincial proposals in July 1891. He found their support "almost as surprising as the fact . . . that the present Parliament which was elected expressly to turn me out now almost unanimously supports me".62

In the debate on separation in October 1891, a procedural motion at the committee stage was defeated thirty-five to eleven, which effectively ended
debate, although the central districts' representatives still opposed the proposal.

The long-standing issue remained alive in Queensland despite its continuing to prove extremely difficult for any scheme to gain the approval of the parliament. Griffith's labour manifesto of February 1892 demolished one argument for separation, but the movement continued to grow during the year. In London, appointed representatives of the Central Queensland Territorial Separation League had sought and been granted an interview on 6 May 1892 with Knutsford, who promised reconsideration after it had been once more "thoroughly thrashed out" in the Queensland parliament. His statement was misinterpreted by separationists as a promise of imperial intervention in their favour, for as he privately wrote to Griffith, "I uphold your view of Provincial Legislatures, but a united Queensland, against territorial separation".63

The North Queensland Separation League at Townsville on 26 May 1892 passed motions in favour of "nothing short of territorial separation", which the Queensland governor was requested to pass on to the British authorities. Griffith's proposals for provinces were attacked, but he was not perturbed: "I have no reason to alter my previous opinion that the majority of the people in the North would prefer either a system of provincial government, of a continuation of the present constitution".64

Griffith introduced his revised bill into the Legislative Assembly on 23 June 1892. His scheme to set up the united provinces of Queensland provided for a bicameral central legislature: a Senate of twenty-four members (eight from each of the three provinces); and a House of Representatives with one member for each ten thousand of the population. The governor was to be appointed by the Queen, and the executive was to consist of the governor advised by a council of ministers chosen from either House. The ministers could speak in either House, but could vote only in one. The legislative powers of the central government were strictly defined under forty heads, with the residue left to the provinces. It was, for example, to legislate for Polynesians and Chinese, while legislation for Aboriginals was to be left to the provinces.

The legislature proposed for each province was different: the south was to have a Legislative Council of all councillors living in South Queensland, and a Legislative Assembly of forty-six members; the centre was to have a Legislative Assembly of twenty members; the northern Legislative Assembly was to have thirty-two members. All of the members of the assemblies were to be elected for a three-year term. Provincial laws were to be allowed or disallowed by the Queen. The executive for each province was to consist of the lieutenant-governor and his ministers, who were to number up to six in the south, and up to four in the centre and north.

The judiciary sections provided for supreme courts in each of the three provinces, which could appoint their own judges. Finally, following the United States model, a small, directly-governed territory was to be the seat of the central legislatures.65

It soon became clear that the bill was by no means certain of passing, its length and complicated details leading to considerable debate. Griffith made his second reading speech on 26 July, after which Nelson successfully moved an adjournment that delayed discussion for a week.
On 9 August, however, a drastic change was made to Griffith's plan, for by thirty-eight votes to nineteen, it was decided to divide Queensland into two, not three, provinces. Griffith and the ministers voted for the amendment and, after it was carried, announced that the bill would be withdrawn and redrafted.

The revised bill was introduced on 20 August. Griffith described the scheme

as the beginning of a system of federation which would extend by force of example. In this as in some other respects he hoped Queensland would lead the way for the other colonies in adopting something which would be for the benefit of the whole of the people of Australia.66

The bill passed the second reading stage without a division, but various amendments had been foreshadowed for the committee debate; one member alone listed eighteen changes.

The detailed criticisms of the bill were combined with accusations that Griffith was being unprincipled and inconsistent in his attitudes to separation. Eventually the Legislative Assembly passed the bill by thirty votes to thirteen, which was a two-thirds majority of those voting, but twenty-nine members had abstained.

On 27 October the Legislative Council defeated the bill on its second reading by twenty-seven to nine, despite a spirited defence by Macdonald-Paterson, mainly on the grounds that it had not received a two-thirds majority in the lower House.

By the time of the rebuff from the council, Griffith had already decided to leave politics, which seriously diminished the possibility that his government would again submit the bill to the Legislative Assembly. Most of the committed advocates of territorial separation were jubilant, for they were confident that the Imperial government would intervene, and would support the division of the colony rather than Griffith's plan for provincial autonomy.67

Insofar as his solution to the protracted question of separation was not adopted, Griffith had failed. But so had all previous attempts to satisfy the separationists, and Queensland remained a single colony — if that were what Griffith had wanted, he had succeeded.

In his 1883-1888 ministry, Griffith had maintained restrictions on Chinese immigrants into the colony, consistent with his attitudes as attorney-general in the 1870s. Soon after he returned to office in 1890, his secretary for mines, W. O. Hodgkinson, introduced the Goldfields' Amendment Bill to exclude Chinese from the Russell River goldfield for longer than the three years for which they were prohibited from working on any "new" field. The measure was strongly opposed by Macrossan, which surprised both sides of the House, but the bill was passed and went on to London for the royal assent. The Colonial Office decided that, as there had been no change of principle since the British government had given its approval to the 1878 act, no objection could be made. However, the Foreign Office thought the bill harsh (the penalty proposed was £500). The Colonial Office then suggested the act should provide for a maximum penalty of £100. It also queried a section of the act that made the master of a ship liable for the absence of any Chinese member of his crew. When Griffith's government remained firm, the Colonial Office acquiesced.68
In 1892, Griffith was tolerant towards some Chinese. Fears were being expressed at the numbers of Chinese coming in from the Northern Territory of South Australia; thirty or forty reported to be living in destitution in Camooweal. Griffith stated that, "if it became a question of observing the law or being guilty of inhumanity the Govt. would observe the dictates of humanity". Some twenty of these Chinese were allowed to enter Queensland.

Overall, however, Griffith did little about the Chinese during his second premiership, and that little was largely a continuation of the restrictive policies that he had been instrumental in introducing in the 1870s. Griffith's political actions, in this as in other areas, were largely based on a realistic appreciation of the strong hostility existing in the colony; only rarely was he a humanitarian.

Griffith was very sensitive to criticism of Queensland's treatment of the Aborigines. He reacted strongly in a Melbourne press interview in January 1891 to statements made by two Presbyterians, Professors J. L. Rentoul and H. Drummond, after they had visited North Queensland. Griffith's reply was both admonitory — "I have been told that the two professors meditate a terrible attack upon the Queensland Administration for its treatment of the blacks" — and provocative:

I hear that the Presbyterians intend to ask for permission to sell arms and ammunition to the natives of the New Hebrides. If it is true that the Presbyterians would like permission given to the British traders to sell grog to the New Hebrides natives, this is a curious commentary on their anxiety for the welfare of the blacks of Queensland.

Rentoul in reply claimed that the purpose of the visit had not been to attack Griffith but to "begin gathering in, saving and civilising the Queensland aborigines". He repeated his condemnation of the miseries and atrocities inflicted on the Aboriginals of Queensland. "You know", he told Griffith "what the method and law of 'police-dispersions' are, with the order to render 'no report'! But now that it is proposed to do away with the 'black police' and to put an end to these dreadful 'dispersions', you are, I suppose, aware that great indignation is felt and expressed". Griffith had, he alleged, shown a callous disregard for Aboriginals infected with syphilis and gonorrhoea: "If it were possible to drive all the aboriginal population into reserves, and to keep them there, the probability is they would die of some other disease".

At no time was Aboriginal policy at the forefront of Griffith's programmes. He drafted, and successfully introduced, a bill making it illegal to sell opium to Aboriginals, and he investigated complaints, but he regarded their condition as being less important than the economic problems of white settlers, and less significant than the treatment of the Pacific Islanders. Griffith shared the prevailing view that the Aboriginals were a "dying race". The Queensland Aboriginals were being exterminated, but Griffith's liberal conscience was not unduly worried so long as this process was slowed down, and legally supervised rather than being hastened by uncontrolled violence.

The Griffilwraith was constantly plagued by forebodings of financial disasters. Queensland governments had traditionally relied heavily on loans,
mainly from Britain, to finance their policies, and the Griffilwraith had followed this practice when it passed a loan act in 1890 authorising the raising of £3,704,800. In January 1891, McIlwraith warned Griffith that loans would have to be floated to the limit of this amount. The government’s credit balance in London was £595,000, but interest on debentures due 30 June 1891 amounted to £538,000. The Bank of England was prepared to back loans of up to £2,500,000 to be raised between April and June, on the understanding that no further loan was raised for at least a year. After postponements an attempt was made to issue a loan in mid-May, but it failed, and Garrick reported rumours that brokers were boycotting it. Garrick was involved in an alternative scheme, the formation of a syndicate to raise funds, of which the Bank of England was only to be asked for £500,000. This syndicate successfully raised £2,500,000 by 12 June.

In the sequel, the Bank of England took offence at a critical statement McIlwraith made in parliament, and it huffily gave notice of its intention of ending all dealings with Queensland except the servicing of existing loans. Griffith had refused to apologise to the bank, on behalf of his government. In 1892, when Queensland next sought loan money, it secured £600,000 at 4 per cent interest from the Bank of England on short term. The Queensland National Bank, which had been arranging underwriting, was disappointed the government had chosen the Bank of England, even though the deal was "not a bad one" for the government.

Governor Musgrave's misgivings as to the workability of the complicated division of control of British New Guinea between Queensland, the other contributing colonies, and Great Britain seemed vindicated by the growing personal antipathy between MacGregor and Queensland's new governor, Norman. Norman insisted that the functions of the Queensland governor vis-à-vis New Guinea were more than advisory, whereas MacGregor considered Queensland's role was only advisory and that he would accept directions only from the Colonial Office. Norman, who had had thirty-five years' military and administrative experience in India, was not disposed in his sixties to accept the arguments of a mere Scotsman in his first gubernatorial appointment.

The Colonial Office rebuked MacGregor for his official protests against Norman, for it was well aware of the unfortunate effects these personal quarrels could have on the administration of New Guinea. Griffith remained on good terms with both sides. His relationship with Norman became as close as it had been with Musgrave, for the two men continued to correspond long after Norman had left Queensland, while Norman's wife also corresponded with Griffith in Brisbane and from England. It is clear that Griffith was "diplomatic" in his dealings with the two men.

MacGregor had urged Griffith to come and see his work for himself, and consequently Griffith took his two sons, Llewellyn and Percy, to the colony in December 1891. They visited Yule Island, Port Moresby, Kapa Kapa, Hula, Aroma, Amazon Bay, Samarai, East Cape, Dobu and Duau. The three Griffiths escaped malaria, but all were dramatically reminded of the health hazards of the colony when the pioneer Anglican missionary Albert Maclaren died the day after he boarded the Merrie England. Griffith told Jeanie Musgrave it had been "a most interesting and delightful trip. The work that Sir William has already done is very remarkable".
As well as being premier, Griffith held the office of attorney-general for thirty-one months between 1890 and 1893, during which time he appeared in the Supreme Court thirty-two times, maintaining his overall average of one case a month. In some of these cases, he acted as a private barrister.

The most contentious case involved a shearer, Frederick Bilby, who had been convicted by the Blackall magistrates for intimidating "scab" (called "free" by the non-unionists) labourers. During the strike, some labourers were arrested after a bridge was destroyed. Bilby was one of a number of shearers who tried to raise money for their defence. When Bilby asked some non-union labourers to subscribe, they refused, whereupon Bilby threatened them, and they complained to the manager of the station that they feared for their lives. Bilby was arrested on a charge under the Act 6 George IV c.129. The magistrates fined him £10, with £25.12.8 for costs, in default three months' imprisonment with hard labour.

In the appeal to quash the conviction, Griffith claimed that both the solicitor-general and himself (as attorney-general) were not appearing for the magistrates, but were there because the case raised the important question of whether "a statute was in force in the colony which was supposed to be in force, and under which persons had been deprived of their liberty". He hoped this would be the issue to be decided, rather than any technical points in this particular case: "certainly we are not in court to discuss a question of form in connection with this conviction". In an aside, Judge Harding, who had been the judge at Rockhampton where the longest sentences had been imposed on strikers, remarked: "I looked at George IV, but I did not use it in any shape or form. I always carefully avoid anything which may possibly burn my fingers".

The fine imposed was greater than the five pounds allowed by the combination of the Justices Act and the 1826 act. In preliminary arguments, Chief Justice Lilley admitted that it was "most excessive" and should be reduced to £4.19.11¾d. The issue then argued was the application of the 1826 act to Queensland. Griffith held it was one of the English acts of which Blackstone had said "that so much of them remained in force as were applicable to the circumstances and conditions of the colony", and had been specifically applied by 9 George IV c.83. Griffith claimed the 1826 act, being a law relating to the liberty of the subject, and for protection of the subject from violence to his body, was applicable to the conditions and circumstances of the colony. Griffith was sure that Bilby's words amounted to intimidation: "the language used is stronger than any previously reported. No decent person could remain on the station and submit to it". Judge Real interjected, "If it were applied to me, and there were a great number there, I should provide myself with a pistol. I would rather pay the 6s. 10d. [the sum asked by Bilby] than have it applied to me". Griffith agreed that most men would prefer to pay than to submit to such language.

In reply, the barrister E. Lilley endeavoured to persuade the court that the 1826 act was specifically intended for English conditions and not applicable to the circumstances of New South Wales in 1828, where the conditions of labour were so entirely different from those in England. He outlined the history of legislation dealing with labour, which led to a revealing exchange: when he claimed that the first Masters and Servants
Act in England was 9 George IV, c.9, his father interjected from the Bench "the Masters and Servants Act before that was the whip".

Lilley concluded that if the 1826 act could be

revived and sprung upon us at a moment's notice, we are living in a very risky state of affairs, and the sooner the Court decides the point the better. With respect to intimidation, threats were used, but they did not amount to intimidation.

The court, however, found the act extended to Queensland and that there had been intimidation.78

For the strikers, legal hairsplitting had little relevance; in their view, the Rockhampton trials had confirmed that law had become the servant of capital. For Griffith, and even more for Chief Justice Lilley, the issue was less clearcut. Both lawyers believed sincerely in the objectivity of the law, that it did not take sides, but was capable of being impartial even in such times of rival passions. The rule of law was a central strand of Griffith's thought, as it was indeed of the British system of government.

Griffith, again as attorney-general, appeared in the case of a shearer fined ten pounds and costs or, in default, a month's imprisonment, for leaving his work. The main ground of the shearer's appeal was that there had been no written agreement as required by the Masters and Servants Act. Griffith claimed that there had been a verbal agreement, to which there had been a witness, and that a jury would be justified in finding on the evidence that the shearer had agreed to continue shearing throughout the season.

Lilley upheld the appeal, ruling that there had been no definite agreement. He also cited a rule of the Queensland Shearers' Union that "any member of this Union forced to stop work on account of sickness of self or family, or for any other reasonable cause, shall be paid for the full number of sheep he may have shorn up to the time of his leaving work" as evidence that it had been agreed that a shearer "for reasonable cause may retire from work". The manager's letter, written after the dispute began, could be reasonably interpreted as indicating that, "he did not care whether he [the shearer] stayed or went and could do very well with the men who chose to remain".79

Similar points were raised in another case of a shearer leaving his work. The shearer was engaged by a firm to shear on Mount Morris Station, where there were eighty to ninety thousand sheep. The price was twenty shillings per hundred. After the agreement was signed, the scale of rations was read out, and the shearers objected that mutton was not listed, and that the price of beef was high (two and a half pence a pound). Later, the men complained about the meat that was supplied; in particular, they wanted beef instead of mutton. Eventually a bullock was sent to their mess, but the men claimed it was inedible. They told the overseer that the meat was unfit to eat, and they would not work unless they were given proper meat. More sheep were brought to the station for killing. Subsequently the men left the station, whereupon the firm accused one of them of breaking his agreement. The magistrates at Charleville, finding that the beef was good and the complaint frivolous, convicted the shearer.

The shearer appealed on several grounds: that there was a lack of supporting evidence; that he had reasonable cause to refuse to fulfil his agree-
ment; that it was bad in law to rule that the fine (£6.16.6) be paid out of wages due (£20.13.11); and that there was a lack of evidence of an agreement as required by the Masters and Servants Act.

Griffith, for the Crown, opposed the appeal, pointing out that evidence on the quality of the beef had conflicted, and that the returning of that beef had no more to do with their refusal to continue working than if they had been denied champagne, and the magistrates considered it to be merely a pretext for breaking the agreement.*

Lilley granted the appeal, deciding the case under the law as to reasonable cause.

Griffith's other cases were unremarkable either legally or politically, but they were certainly varied: deciding whether tramways were rateable, and whether a hawker could sell vegetables without a licence; the order of survivorship after the wreck of the Quetta; boundary arguments between pastoral stations; and disputed fire insurance claims.*

While premier, Griffith had extended his outside interests. His involvement in the federation movement increased, and he continued his advocacy of the Federal Council (of which he was re-elected president in January 1893).* He remained an active member of masonic, educational, financial and other bodies. Griffith had been elected president of the Geographical Society just before he left the Opposition, on 28 July 1890, delivering his presidential address the following July.* He continued to serve on the boards of the Mutual Life Association and the English Scottish and Australian Chartered Bank, of which last he had been appointed a local director on 5 October 1889. He regularly attended freemasonry gatherings, his ascent within the various orders paralleling his legal ascent, he became Provincial Grand Master under the Irish Constitution.* Griffith's diary records his artistic and other activities, such as opening the Queensland Art Society's exhibition, and serving on the councils of the Literary Circle and the National Association and the committee of the Working Boys' Home.

Perhaps the outside activity that is most revealing of Griffith's character was his work with the grammar schools. He had been an active member of the board of Brisbane Grammar since 1871, and, from 1882, Brisbane Girls' Grammar. His father had originally nominated him. Griffith faced only one major crisis as trustee of the boys' school: the dismissal of the first headmaster, T. Harlin. Harlin was alleged to have made the school too much like an ordinary commercial academy. Reginald Heber Roe, his successor, and headmaster from 1876 to 1909, restored the balance. Griffith also served on the committee (of two) that condemned the existing site of the school and found other land on Alice, Albert and Margaret Streets (the purchase of which fell through), and then in Gregory Terrace, which was bought in 1875. Building began four years later.

Roe was a close confidant of Griffith, and both approved of the school's steady progress and growing academic reputation. The average attendance rose from 122 in 1876 to a highpoint of 251 in 1889.*

Griffith's sons were enrolled at Brisbane Grammar in 1889 when Llewellyn was aged sixteen and Percy twelve. Neither son emulated their father's school achievements. Llewellyn spent two years there, coming eighth out of nineteen in the Upper Modern School in his final year. On
his official pupil's record he is described as "not quick at his work but steady and well behaved". Llewellyn was to become a foundry apprentice, while Percy spent six scholastically undistinguished years in the school.

Griffith's four daughters attended Brisbane Girls' Grammar, a school Griffith had helped found. Trustees of the boys' grammar school had first discussed setting up an associated girls' school on 23 October 1874. In February 1875, Mrs Janet O'Connor of Ballarat was appointed headmistress. The location in George Street proving unsuitable, the trustees chose the present site on Wickham Terrace. In 1881, when Miss Beaulands was appointed Lady Principal, the girls' school was handed over to its own trustees, although in fact the same men, including Griffith, sat on both Boards. Griffith was elected as chairman of the trustees in 1888.

The trustees, strongly supported by Griffith, established the Queen's Fund to enable Queensland girls to continue their education at a university. Griffith had been active in moves to form a university in Queensland, and he was also personally involved in the collection of funds by Jeanie Musgrave, who chaired a ladies' committee. Overall his service as trustee was conscientious and thorough, typical of his legal and parliamentary activities.

In March 1893, Griffith became chief justice of Queensland. The reasons for his appointment were manifold, beginning with the increasing suspicion, both within and without the legal profession, that the standards of the Queensland bench were not as high as they might be. Lilley was under attack on several grounds: his alleged favouring of clients represented by his sons; the suspicion of political partiality (he was to stand as a candidate allied with the Labor party in 1893); his allegedly rash decisions. Lilley had clashed frequently with McIlwraith's party (in which he "discerned the robber baron mentality exemplified on the world stage by the American Jay Gould"), and had strongly criticised the McIlwraith. Critics attributed the court successes of Edwyn, Lilley's favourite son, to "The Holy Trinity, Father, Son and Holy Ghost". In July 1890, M. B. Gannon, a McIlwraith supporter, had even introduced a Justices Prevention Bill, modelled on New York legislation, to exclude sons from practising in their father's courts. Lawyer parliamentarians defended their profession, but they lost patience after Lilley's judgment in the malpractice case the Queensland Investment and Land Mortgage Company of London had brought against its Brisbane board (including McIlwraith and Palmer). Edwyn Lilley, appearing for the London directors, was allowed by his father to change the pleadings and introduce new charges five months after the hearing began. The jury's answers to 123 questions the chief justice put to it favoured the Brisbane directors on most points: on only two questions were they undecided. Lilley discharged the jury and reserved his judgment. On 16 August he delivered it, condemning the Queensland board on all significant points.

Despite Lilley's attempts to justify his judgment, many thought it was a denial of justice. Gannon had renewed his attacks, moving in the Legislative Assembly that no judge should sit alone or in chambers in any matter in which his son was a counsel. This had been passed by a vote of forty to four on 21 July. The disputed judgment was appealed: the Full Court,
by special arrangement, replaced Lilley with Sir William Windeyer from New South Wales. Griffith, as premier, was concerned in this choice of another Maitland person. It overturned Lilley's judgment on 12 October. Ninety-nine days later, Lilley was granted three-and-a-half months' leave prior to his retirement on 13 February 1893.

McIlwraith had also sworn vengeance on Lilley, employing an enquiry agent to rake his past for unsavoury details. Griffith expressed his uneasiness in a private letter:

the fact is that the administration of justice in Queensland has fallen into contempt and no one thought that Mr Justice Harding, with all his good qualities, was the man to restore confidence and respect. Of course there were manifold objections to each of the other judges.

He did not specify these objections to the northern judges, Pope Cooper (who had served for ten years since 5 January 1885) or the more recent appointees, Charles Chubb (since 2 December 1889) and Patrick Real (since 8 July 1890).

These internecine disputes are relevant to the final cases in which Griffith appeared as barrister. The money he made from his cases while still premier gave him a share in the general opprobrium incurred by lawyers. In one such case, Griffith, as attorney-general, appeared with Mansfield for the Railway Commissioners against Rutledge and Edwin Lilley for a contractor. In 1890 an agreement had been signed to build a section of the north coast railway, between Yandina and Cooran. When disputes arose, they were referred to arbitration. Griffith appeared in these hearings on twelve days in March 1892. The commissioners then objected to the award on the grounds that the arbitrators had exceeded their jurisdiction in admitting evidence in support of certain claims that already had been granted; that the costs awarded were excessive; and that the arbitrators had no jurisdiction to award themselves a specific sum.

The hearing reached the Full Court in April 1892. Griffith objected that the award to the arbitrators (£600 apiece, less the fees for shorthand writers) was excessive for twenty days' work. He argued that the Supreme Court, not the arbitrators, should decide, for while subordinate courts may determine matters of jurisdiction, their decisions were not binding. The three judges, however, argued that 'the parties by submitting to the referee took the arbitrators, with their law, good or bad, for better or worse'. They agreed to set aside the award of a specific sum to the arbitrators.

Disputes over railway construction were common, and Griffith spent much time between October 1892 and March 1893 involved in arbitration, as in the case of a contractor, named Robb, who had built a line from Cairns through to Herberton on the Atherton Tableland. The line proved to be expensive to build, and disputes arose with the government. Griffith spent fifty-nine days in court on this case alone over five months. The total costs of the case were over £23,600 (£12,700 for legal costs and £11,050 for fees, of which Byrnes received £2,968.13.0 and Griffith £2,778.3.6). Griffith's base fee was 500 guineas, with an additional 35 guineas a day refresher. Sir Henry Norman, the governor of Queensland in a private letter to Lord Ripon was very critical of the whole matter, and especially of Griffith's involvement:
enormous expense has been incurred on account of arbitrators, counsel and expert witnesses — the three Arbitrators alone receiving 15 guineas a day a piece while the Attorney-General [Griffith] and Solicitor-General [Byrnes] as first and second counsel for the government have been receiving very heavy fees, and altogether it is estimated that the costs will amount to fully £50,000 . . . the position of the Premier in the matter is I think to be regretted . . . .

I desire to say nothing against Sir Samuel Griffith but . . . my Indian experience makes me very averse to high public men laying themselves open in any way to charges of using their positions so as to reap personal advantages. There is not however in this country . . . keen feelings on these points that are instilled into Indian officials by tradition and example."

Griffith had other reasons for leaving politics besides his desire to improve the quality of Queensland justice. He was disappointed with the achievements of the Griffilwraith. His health had been adversely affected, as he told Lucinda Musgrave. He had

several times this year been on the point of break-down in health. I am obliged, for the sake of the income, to keep up my professional work. And the strain of doing so, and also attending to my official and parliamentary work begin to tell on me severely. People say I have aged in appearance very much during the last two years. I have indeed become tired of always living at such high pressure.""

Another friend sympathised with the effects of his heavy load: "your hair has whitened before its time and the too early furrows have ploughed your brow". His closest friend, Mein, died on 30 June 1890 and Griffith selected the site for his grave in Toowong Cemetery. Two months after Mein's death, Griffith's father became gravely ill with "insidious heart disease". He died on 22 September 1891. Griffith had been often at his bedside: "four times . . . in extremis. Sat up there till midnight" (19th); "went to fathers at 2.30 am and stayed till 4. Called again at 10.30 and 7 pm" (20th). His mother and his sister Alice's baby both died on 18 April 1892. As well Macrossan, his contemporary, had died on 30 March 1891. For the first time, Griffith looked older than his years.

Griffith's financial position had not been helped by his speculation in Mt Morgan shares [which he had bought for £15,000 in 1888]. They plummeted in value and on 9 April 1892, at a time when he was being thought of as Lilley's successor as chief justice, he had been forced to raise a mortgage for £20,000 at 6 per cent annual interest on the security of "Merthyr" and his other suburban properties, which totalled over 150 acres. Optimistically, he hoped to pay the principal by 1894.

Griffith's pride in "Merthyr" had increased over the years, and was not to be diminished by his financial difficulties. Its future was directly related to his 1892 decision to accept the appointment as chief justice, as he wrote: "my pecuniary position would not allow me to take the office of C.J. at £2,500 a year, unless I were prepared to leave this house and go and live very quietly in a small house".

Griffith was well aware that a chief justice had higher status than a politician; he already had his eye on the chief justiceship of the High Court that would be instituted when Australia achieved federation; and was very conscious of how high the position would rate socially. This supplemented the intrinsic challenge of his legal work whether in Queensland or in a future federated Australia, which he believed he could do as well if not better than any other lawyer.
Before Griffith agreed to accept the chief justiceship, its salary was raised by £1000 to £3500 a year. He explained the circumstances to Lucinda Musgrave:

you will I am sure understand [my] . . . difficulty . . . when Mr Nelson introduced a Bill to raise the salary of the C.J. to £3500 with the avowed object of inducing me to take the place. At last, not knowing what to do, I determined to do nothing and to be guided by the action of Parliament. And as they passed the Bill I do not see how I can, not having interfered by saying I would not take the office, in which case the Bill would have been withdrawn, now refuse to accept it.\(^\text{10}\)

Despite such sophistic statements, Griffith did not accept the chief justiceship only for its financial rewards; even if Robb cases were rare, he had long established his right to high fees, so needed relatively few cases to earn £3500 in any year. Certainly his decision was influenced by his indebtedness, itself related to the financial crisis felt in Queensland as much as in Victoria, so that an assured security of £3500 a year was temporarily important. But other reasons — health, family, prestige and legal ambition — were also important.
Long before Parkes's moves led to the Melbourne conference in February 1890, Griffith had been a convinced federalist, though well aware of the many "lions in the path". He was to play a central role at the 1890 and 1891 conferences, but then was largely in the background after he became chief justice of Queensland in March 1893, except on occasions, such as the 1900 London proceedings.

Griffith realised by 1890 the need for sincere federalists like himself to work with Parkes, whatever airs were assumed by that vain leader. He came to the Melbourne conference hoping for a new start for federalism, knowing from his work in the Federal Council that any organisation would be weak without New South Wales.

Yet he knew, too, how tentative was the Melbourne conference. It was not a conference of governments, nor had it a specific agenda. Griffith, in Opposition since June 1888, had been told by his premier that members of the Federal Council were to meet delegates from New South Wales "simply in the character of representatives of their several Colonies for the special purpose". Morehead considered it superfluous to give Griffith or his fellow delegate Macrossan (who had just become colonial secretary) any specific instructions. Parkes, in a private letter to Griffith, blamed Gillies for the indecisive arrangements. Griffith, who had passed through Melbourne in January 1890, agreed: "the impression conveyed to my mind . . . was that the [Victorian] government . . . only wanted some decent excuse for shelving the whole thing".

Parkes's flattery of delegates at the banquet on the night of 6 February did not convince Griffith that the veteran's stubborn resistance to cooperation during the past three years had been abandoned. He needed more than fine phrases about the crimson thread of kinship before being assured that progress would come from the conference. It was adjourned on 7 February because Parkes was ill; when it reassembled on the tenth, Parkes had the honour of making the first speech. Deakin formally seconded Parkes's resolution. But merely declaring that the members of the conference agreed that "the best interests and the present and future prosperity of the Australasian Colonies" would be promoted "by an early union
under the Crown’ left much to be done to overcome intercolonial rivalries, as Griffith knew as well as any other delegate.\textsuperscript{5}

Griffith delivered the second, far more practical, speech. His formal opening was insincere:

I rise with some diffidence to follow ... Sir Henry Parkes, after the very able and eloquent speech ... full of historical information and deep research.\textsuperscript{6}

Griffith presumed that all delegates favoured a federal government. Their objective was "to exchange ideas and to consider ... how far we can ... [ask] the legislatures from which we come to entrust powers to a convention to frame a Federal Constitution". He wanted them to be practical, and he wanted them to be frank: "it is important we should know and consider the lion in the path, or any number of lions there may be ... and I confess with ... Parkes that I do not feel alarmed about any of these lions". He then proceeded to name some of these lions. Could a satisfactory executive be framed? Could the colonies agree to diminish their powers? Griffith did not see fiscal union, which Service had called "the lion in the path", as immediately necessary; a federation without it would be better than no federation at all. If a central parliament, were set up, "the absurdity of fighting one another by customs tariffs would become so apparent that before very long they would be given up".

Defence could not be satisfactorily dealt with by individual colonies. Neither could external relations, trade and commerce, copyright and patents, the control of undesirable immigrants, and property law. He ended by saying he would be "deeply disappointed if, as the result of this Conference, there are not laid the foundations of a real, strong, permanent and complete Federal Government of Australasia".

Griffith's oratory was never outstanding, and this speech, albeit spoken to the converted, is not particularly persuasive. It reveals the cautious lawyer and practical politician, for whom careful analysis was more important than the mouthing of idealistic hopes. Many could talk of Australia becoming the greatest nation in the Pacific; few could recite the relevant provisions of the Canadian federal act.

Griffith had referred to the Canadian, but not the United States, model, although he had also studied the latter. It was another lawyer, Inglis Clark, Tasmania's attorney-general, who spoke at considerable length on the United States model. He preferred it to that of Canada, which he described as "amalgamation rather than ... Federation". Deakin urged all delegates to read James Bryce's three-volume The American Commonwealth (which Griffith does not seem to have read until after the 1890 conference). At this conference, Griffith ranked neither Clark nor Deakin as his superior in knowledge of the United States of America, but afterwards he said that Macrossan, his fellow Queensland delegate and erstwhile bitter political rival, was the best informed of all.\textsuperscript{7}

Overall, Griffith was "agreeably surprised" at the progress achieved by the 1890 conference. The delegates left with a moral commitment to get their various colonies to appoint delegates to the planned 1891 convention. As Griffith was in Opposition, the more effective political pressure came from Macrossan. On 15 July, the lower House agreed to send both Government and Opposition delegates: Griffith, Macrossan and McIlwraith,
Griffith the mature statesman.
(Courtesy of the Mitchell Library.)
John Donaldson (a businessman and former treasurer) and Arthur Rutledge (a barrister). The upper House added two solicitors, Andrew Thynne and Thomas Macdonald-Paterson. Griffith was to play a major — probably the most important — role in the 1891 convention, although he had had less time than others to study federal precedents. Inglis Clark's six-month visit to England and the United States had strengthened his support of the American model, which was reflected in his draft "Constitution for Australasia", copies of which he sent to Parkes and Barton and to others in South Australia in February 1891. Griffith's diary shows that he met Clark in Hobart at the Federal Council meeting on 17 January, and he may have seen it then. It was the model for the draft constitution produced by Kingston of South Australia. Griffith did not prepare a draft.

At the banquet on the eve of the 1891 convention, Griffith confessed, somewhat uncharacteristically, that he was tired of being called "a colonist". He emphasised that he was not preaching separation but believed that Australia was now able to do most things for herself, rather than relying on the British Parliament to do them. Perhaps he was seeking to disprove the reputation he gained at the 1887 Conference of being an "imperialist".

Griffith was present at the preliminary meeting where the form of the introductory resolutions was settled. Griffith, possibly after reaching Sydney, had had printed draft "instructions", which were more terse than those drawn up by Parkes, although he expanded on them at the meeting, where they, as well as points from Clark's and Kingston's draft constitutions were discussed. Most of the resolutions adopted were closer to Parkes's original suggestions than Griffith's, although the infamous two words "absolutely free" — referring to trade and commerce between the colonies being "absolutely free" — were "a piece of layman's language" La Nauze attributed to Griffith.

The fundamental difficulties facing the divided colonies.

A basic issue was "how far the separate self-governing states on this continent are to surrender their powers of autonomy", which, as Griffith pointed out, depended on "the functions of the federal government . . . it is absolutely necessary that we should have a clear conception of the work that it has to perform". This led him to consider an "essential condition" of American federalism: all national laws had to be approved by a majority of the population and a majority of the states. Such a concept was "absolutely new" to the bicameral British parliamentary system in which, by convention, the lower house had acquired a "preponderating influence" over the upper (he may have been remembering his defence of the Queensland Legislative Assembly against the Legislative Council). What should be
the powers of the two proposed Australian federal houses, one chosen "in proportion to population", the other to have equal representatives from each state? Griffith, after close argument, proposed that the first, the House of Representatives, should have the sole power of originating taxation and appropriating revenue, while the second, the Senate, should have power of veto.

Considerations of the powers of the two houses led Griffith to expound on another problem arising from linking responsible government with a federal system.

We are accustomed to think that the essence of responsible government . . . is . . . that the ministers of state have seats, most of them, in the lower house of the legislature, and that when they are defeated on an important measure they go out of office . . . [this] is only an accident of responsible government, and not its principle or its essence. In form — legal form, I mean, statutory form — so far as our written Constitution goes, and so far as the unwritten and partly written Constitution of the United Kingdom goes, the system depends on these propositions — that the ministers are appointed by the head of the State, the Sovereign, or her representative, and that they may hold seats in Parliament.

The best solution might be to provide that ministers "may" [not "shall"] sit in parliament. The history of the American constitution had "shown the unwisdom of the system . . . of having ministers dissociated from the legislature".

Griffith's point was that the proposal that the two houses were to have equal authority meant associating principles that had "never in the history of the world" been linked. If the executive came from both houses, the problem was how to "guarantee that the machine will work if we insist that these ministers should hold their offices in form as well as in reality, by the will of one house only? Does not the probability of a very serious deadlock occur here?" He pointed out that if a majority in the House of Representatives came from, say, two states, there could well be a clash with a Senate representing all states:

We must take into consideration the existence of these two forces possibly hostile, even probably hostile, before, say, fifty or a hundred years are over, and we must frame our constitution in such a way that it will work if that friction does arise.

Interjections by Playford, Gillies, Cockburn, Deakin and Gordon proved that Griffith's point had been well taken. He had produced "a lion in the path more substantial than Service's paper tiger of intercolonial fiscal jealousies".

Because he could not predict future changes, Griffith wanted "a constitution so elastic as to allow of any necessary development that may take place".

Griffith had said little on the question with which he was to be so intimately related: the judiciary. He believed there should be a supreme court of appeal from all the Australian courts ("not on the American model"), but he was undecided as to whether there should be a right of appeal to a higher court representing the whole British Empire. Griffith had said little on the question with which he was to be so intimately related: the judiciary. He believed there should be a supreme court of appeal from all the Australian courts ("not on the American model"), but he was undecided as to whether there should be a right of appeal to a higher court representing the whole British Empire. Griffith had said little on the question with which he was to be so intimately related: the judiciary. He believed there should be a supreme court of appeal from all the Australian courts ("not on the American model"), but he was undecided as to whether there should be a right of appeal to a higher court representing the whole British Empire.

Subsequent speakers addressed themselves to the issues Griffith had raised, although some had plainly not followed his arguments. When
Munro, for instance, complained that Griffith had “submitted to us a number of riddles which we are asked to solve”, Griffith interjected, “I thought I did solve them!” To Munro’s claim that Griffith had said he did not “think the government or the executive should be responsible to the house of representatives”, Griffith testily interrupted, “No, no. I said nothing of the kind. I said I did not think it should be a rigid rule of the constitution that it must be responsible to one house only. I repeated that about ten times, and I thought I had made myself clear”. Munro continued to press Griffith, who eventually repeated his point: “I propose to leave to the future the avoiding of these difficulties, and that we should not make difficulties in advance!”

Similar exchanges with Playford, who argued that giving the veto power to the Senate would not work, led Griffith to remark; “we have 100 years of example to show the contrary”. When Playford redundantly asked whether “any one here contend[s] to make the senate more powerful than the house of representatives?” Griffith exclaimed, “I did not propose to do so”. When Playford later said he thought Griffith had wanted an executive not responsible to parliament, Griffith reiterated that he had said “that the constitution might ultimately tend to work in that direction. I prefer the present system.”

Deakin, on the other hand, seemed to understand and appreciate Griffith’s approach: “the fact that the Premier of Queensland has seen fit to throw the apple of discord at once among us, is, to my mind, extremely fortunate”. His efforts to pin Griffith down, however, suggest that he had not appreciated Griffith’s neutral stance. For instance, he asked Griffith which mode of election he wanted for the Senate. Griffith replied; “any kind of election ... if it represents the State”, adding that “the majorities of the separate States might be of a different opinion from the majority of the people of Australia taken as one”.

The continuing debate did not interfere with the close personal relationships of the delegates. The conference met only between Monday and Friday. The Queenslanders worked on the first Saturday morning and evening, broken by a prolonged luncheon party on the Lucinda in Middle Harbour. Griffith’s guests were the Deakins from Victoria, the Downers and the Bakers from South Australia, and Fysh from Tasmania, and the Donaldsons, Patersons and Rutledge from Queensland. On Sunday he entertained his in-laws, the Dixons and Minna, to lunch on the Lucinda. In the evening he called on Forrest of Western Australia and then went to Dr Garran’s home. On the following Saturday Griffith had another luncheon party on the Lucinda as she sailed to the Gap and then into Middle Harbour. This time the guests were J. Lee Steere and J. Wright from Western Australia; Cockburn, J. Bray and Gordon from South Australia; A. Douglas from Tasmania and Munro from Victoria. Throughout the conference Griffith continued to entertain delegates.

Cockburn and Griffith had an interesting exchange during the debates on Tuesday 10 March about the rigidity of the federal system. Cockburn argued that elasticity was incompatible with a written constitution; Griffith interrupted, saying there could be “elasticity in its working, although there may be rigidity in the powers”. When Cockburn stated that “a written constitution is absolutely incompatible with that gradual change which
takes place from day to day", Griffith riposted: "No; look at America". Griffith missed Clark's speech, being unwell on Wednesday 11 March, but he was sufficiently recovered by the following day to hear Hackett, of Western Australia, regret having missed Griffith's opening speech, especially as Hackett believed most addresses following had been "replies, more or less, whether comments of censure or comments of approval".

The issue of giving strong powers to the Senate was to divide the conference in its next stage. Thirty-six of the delegates spoke (the remaining nine did not wish to), and Parkes replied on 13 March. During the next four sitting days, the delegates sat as a committee of the whole, amending and voting on the resolutions which, in their revised form, would be the guide for the committee that was to draft the constitution.

Parkes, "being greatly fatigued", was absent on the afternoon of the thirteenth. The first speaker was Macrossan, who raised another "lion": future divisions of the states. Griffith admitted an interest in dividing Queensland, and agreed that the federal parliament would have to decide "whether there shall be separation, and on what terms the new states shall be admitted to the federal union". Before the committee passed the substance of the first resolution (the surrender by states of powers to the federal government), Griffith agreed with the suggested test: "Is it necessary, or is it incidental to the power and authority of the federal government?". He applied the Queensland separation debate to the discussion:

a few months ago it became the duty of the Government of Queensland . . . to consider . . . what were the proper subjects for a central parliament to deal with as compared with those that should be left to local parliaments. The Government were . . . obliged to make out a list — a tolerably complete one, I believe — of the different subjects for legislation and for executive government. He made this list available to delegates.

Griffith urged amplification of all the resolutions, for "in drafting a bill it is better to know beforehand what is the object which its promoters desire to obtain". He was terse with Playford, who thought it unnecessary "to insert every little thing in the resolutions for the information of the celebrated draftsmen of this bill". Eventually only the third resolution (giving the federal government exclusive power to impose customs duties) was amended to include excise duties and the offer of bounties, with the second (trade absolutely free), the fourth (providing for unified federal defence forces) and the preamble being accepted without debate.

The committee then moved on to discuss the contentious question: the form of the federal parliament. Most of the delegates from Victoria supported a weak Senate, which almost all the others opposed. Griffith made it clear that a decision had to be made, for "there is no room open for any meeting between the two conflicting views". He pointed out that the Queensland constitution provided that the Legislative Assembly had "the sole power of originating all bills appropriating revenue or imposing taxation", a phrase that omitted the words "and amending", which had been included in the suggested functions of the House of Representatives. It had always been held in Queensland that the phrase meant that its Legislative Council had no power of
amendment. "In framing a federal constitution", he maintained, "we cannot afford to have any question of that kind to be fought out between the two houses, or to be referred to the Privy Council. Griffith, in a spirit of compromise, suggested that the contentious words "and amending" should be omitted, and that some alternative means of framing the desired conditions of intervention should be devised. Griffith’s suggestion was accepted, whereupon Downer moved his principal amendment: "the Senate to have the power of rejecting in whole or in part any" appropriation or taxation bill. It took two days of "rather tense debate" before the amendments were withdrawn on the understanding that the unsettled main question would be transmitted to the relevant drafting committee. Griffith, who was still distracted by the Queensland strike (which he had discussed with Cardinal Moran on the evening of 17 March), had spoken again on that day. His speech was a strong warning against making a "fetish" peculiar to Australia of the right of upper houses to veto money bills. He pointed out that the House of Lords could interfere with taxation, and all forty-two states of the United States of America gave their second chambers power to deal with money matters. He warned that if there were such a strong divergence of opinion between the people of the smaller and larger states that they cannot agree, and no compromise can be arrived at, there will only be one alternative; they will separate ... If ... in the event of a conflict, the opinion of the larger colonies is to prevail ... That is, of course, equivalent to saying there is to be a revolution. No system of constitution which we can frame will provide against a revolution, or against the colonies being so unfriendly that they will not work harmoniously together.

He continued to display a basic logic which often escaped others. So when Munro challenged him to form "a constitution so framed as not to cause collision between two houses", Griffith baldly replied it is absolutely impossible ... Every constitutional government consists of two or more parts; each one of which can put the machine out of gear. That is the essence of constitutional government. The only means of avoiding collision is to have autocracy.

He consistently stressed that the evolution of political forms must be evolutionary, implying that compromises would always be needed when conflicts occurred.

Macrossan, drawing on his reading of United States history, argued that the fears of the larger states were unfounded:

the question has never arisen as to small states dominating large states in the Senate ... Do not let us forget the action of party ... The influence of party will remain much the same as it is now, and instead of the members of the Senate voting, as has been suggested, as states, they will vote as members of parties to which they will belong.

Afterwards Parkes urged close following of the British constitution ("we want no other") and attacked the idea of a constitution ... framed in the closet, ... framed with the lamp, ... framed upon some theory or some mosaic made up of several theories.
Griffith turned on his president:

[if] the intention . . . was to establish something analogous to the British Constitution . . . all the discussion which has taken place . . . has been wasted . . . it is absolutely impossible to reproduce the British Constitution in Australia . . . [it] is not a federal constitution.

The amendments were eventually withdrawn, which left some delegates, including Griffith, somewhat bemused: "If it is understood that there is a general consensus of opinion, I should like to know what the consensus is, if I am to be a party to it?"^23

The delegates next turned to the question of the executive and judiciary. Baker claimed to have been convinced by Griffith that the British form of responsible government was not compatible with a federation, and he moved an amendment to delete the requirement that members of the Executive Council sit in the House of Representatives or hold its confidence. Griffith explained he had not been arguing for the abolition of responsible government but had been pointing out the impossibility of predicting how it would work with a strong Senate:

I do not think . . . any one of us is in a position to say it will not work . . . the genius of the English people has shown itself for the last 200 years to be capable of moulding the constitution so as to suit it to the exigencies of the times . . . Are we to suppose that the people of Australia do not possess sufficient inventive or adaptive faculty to adjust their arrangements . . . we should not make our constitutions so rigid as to insist upon any particular form . . . of relationship between the executive and parliament.

Griffith argued for an "assertion of principle . . . the opposite of that which prevails in the United States" (where members of the executive could not sit in the legislature). He wanted to add the phrase "[ministers] may sit in parliament". Although Baker offered to withdraw his amendment it was eventually accepted. Griffith having decided not to press for his addition.^24

The discussion of the judiciary centred on whether the judgments of the proposed federal court should be final. Decision was left to further debate after the constitution had been drafted.

Before the session ended, G. Grey moved a resolution aimed against conservative upper houses, by giving a right to alter state constitutions by majority vote in referenda. Griffith urged Grey to withdraw the motion as it needed much more consideration. He agreed that state constitutions could affect "the permanency of the federation"; indeed if a state ceased to have representative government it might no longer be entitled to a voice.^25 An amended motion was accepted.

This stage of the debates ended with the election of three committees: Constitutional, Financial and Judiciary. The second and third were to report to the first, which was charged with the heaviest responsibility, that of preparing a bill for the establishment of a federal constitution. Griffith was elected as one of fourteen members of the Constitutional Committee.

The convention reconvened thirteen days later, on 31 March. On ten of those thirteen days Griffith worked intensively, often for over twelve hours. He was elected chairman of the committee at its first meeting. Although such members as Clark, whose draft constitution was used as a guide, were invaluable, Griffith's pre-eminent role has been recognised by all commentators.
La Nauze, in *The Making of the Australian Constitution*, has reconstructed the sequence of these drafting days using all available sources including surviving copies of successive drafts and of Griffith's notations on these to try to establish individual responsibility for each section. Much still remains speculative, and much must have been the result of joint consultations which were sometimes grave, sometimes light-hearted.

Clark had been ill with influenza when the drafting sub-committee, in Clark's words,

went for a picnic on the pleasure yacht, Lucinda, and while enjoying themselves they took it into their heads to tinker with the Bill and they altered all the clauses relating to the judicature . . . and he took leave to say, messed it.26

The latter stages of the drafting were carried out on the *Lucinda*, which sailed on Good Friday (the 27th) northwards out of Sydney Harbour to Broken Bay and the Hawkesbury River. Two nights were spent with the beautiful backdrop of its "bluffs and high banks"; the first in Refuge Bay near a waterfall, and the second in the "Basin". Griffith, unlike Clark, saw the *Lucinda* as a decided asset:

The *Lucinda*, the Queensland government steamer.  
(Courtesy of the Oxley Memorial Library.)
The best part of it all was that I had the *Lucinda* in Sydney, and was able to entertain the other delegates on board of her occasionally. She was very much admired. All the hard revision work was done on board, far away from Sydney.\(^{27}\)

The drafting was done in several stages. The full Constitutional Committee met on 19, 20, 23 and part of 24 March. It was instructed to make decisions to guide the actual drafters, working from a list of topics that Griffith had drawn up. Griffith began the drafting, alone in his hotel, on the evening of the twenty-third. As chairman of the Constitutional Committee, he received reports from the other chairmen, Munro of the Financial, and Clark of the Judiciary Committees. When the delegates reconvened briefly on the twenty-fourth, questions were asked as to how parts of these reports had reached the press, but no satisfactory explanation was given. Griffith advised it would probably be "physically impossible" to complete his report by the twenty-sixth, as hoped: "I do not see any possibility of having the report drawn up in a complete form before Tuesday [31st] next, unless indeed all the members of the committee are willing to sit on Good Friday and Easter Monday, and possibly Sunday".\(^{28}\) He made it clear that by a "report" he meant a completed constitution in the form of a bill. The convention finally agreed to meet at 2.30 p.m. on 31 March.

Griffith and his committee had seven days in which to complete their task. After a committee meeting on the afternoon of the twenty-fourth, Griffith "all evening" continued to draft the bill. He worked alone again on the printed proof of this draft before lunch on the following day, and was then joined in his work by Clark and Kingston. These three had apparently been approved, presumably at Griffith's suggestion, by the full Constitutional Committee as its drafting committee. They worked "drafting Constitution till 11 p.m."\(^{29}\)

On 26 March, the full committee met to consider the draft constitution. The printers had worked overnight to include all the changes made by Griffith, Kingston and Clark the previous evening.

Griffith and six of his colleagues sailed on the *Lucinda* on Friday 27 to work on the final revision. Barton replaced Clark, who was ill, on the drafting committee, which worked apart from the others on the ship throughout Easter Saturday. Three of the four guests available for consultation were delegates: the Queenslander Thynne, the South Australian Downer and the Victorian Wrixon (who was not on the Constitutional Committee). The fourth guest, Bernhard Wise, was not a delegate but was a close friend of Griffith. During this convention, Griffith lunched with Wise on 28 February, and on 6 March dined with him and his relative by marriage, Professor Threlfell, of the department of physics at Sydney University. It was their speculative discussions that led to the inclusion in one draft of the constitution of the power to control "the transmission of information by any natural power".\(^{30}\) Wireless telegraphy had not yet been invented.

No record exists of the separate contributions of any of those on the *Lucinda*: all we know is that Wise was seasick and that Wrixon, for some reason, left early. The four-man committee [Griffith, Clark, Kingston and Barton] completed its work on the draft constitution late on Sunday.

Griffith revised the draft the next morning before ten thirty, when his diary records he joined the committee. It sat until ten that night, with all
fourteen members debating the *Lucinda* decisions. Again there is no official record of these discussions, although a report of its proceedings appeared in the *Sydney Morning Herald*. What are known are the changes decided upon, since Griffith’s amended draft which he sent to the printers after 11 p.m. that night remains in his papers. His part was presumably neutral. It is impossible to trace Griffith’s attitude to even the most drastic change; the reversal of the Financial Committee’s recommendation on “surplus revenue”. The Constitutional Committee recommended that surplus revenue was to be returned, apparently for all time, to the states in proportion to the revenue each had raised.

The full convention had planned to meet at half-past two the next afternoon. In the morning, Griffith left Sydney by train to attend a military review at Campbelltown, about fifty kilometers south-west of the city. This visit was consistent with his many visits to military camps in Brisbane, and one of his functions as a member of Queensland’s defence committee. He did not stay for the review: he reported to Julia that he was “so ill that I came straight back”. Despite his illness and his two-hour journey, he checked the proofs from the printer. The convention reopened at half-past three. Griffith seconded McMillan’s motion of deep regret at the death of Macrossan, and a few minutes later rose again: “I had”, he recorded simply to Julia, “to make a long speech in the afternoon”. This was his presentation and explanation of the draft bill, the speech which, as his diary baldly stated, “introduced constitution”. So began the final stage of these 1891 proceedings, which culminated eight sitting days later (9 April) in the adoption of what can justly be called Griffith’s constitution.

In his long opening speech, Griffith deliberately presented the committee consensus and not his personal views. He attributed to Macrossan the clause concerning special legislation on the affairs of any race (except Australian Aboriginals and New Zealand Maoris), although it is known that Griffith himself introduced it. Pressed directly on whether Macrosan had expressed himself “to that effect”, Griffith replied, “Yes, in Brisbane”.

When explaining the compromise on money bills, whereby the Senate was given a limited power of veto, he referred to a similar provision in South Australia which had operated “for many years”, and expressed personal confidence in it.

He concluded, on behalf of his committee:

> we have given it [the constitution] our best attention; we have endeavoured, with what success it is for others to say, to form a plan which, so far as regards simplicity of structure and language, will not be unworthy of the English tongue; and as regards the more important matter, the substance, we have endeavoured, with what success it is again for others to say, to lay down a broad and just foundation upon which a commonwealth may be established in the southern seas that will dominate those seas, of which any man may be proud to be a citizen, and which will be a permanent glory to the British empire.”

Next morning, the convention decided that the bill would be dealt with as if it were a second reading so that any delegate could have the opportunity of making general comments. Griffith reached the convention at noon, after attending the requiem mass for Macrossan at St Mary’s Cathedral and seeing his body leave by special train for Brisbane. He therefore missed Wrixon’s speech, in which questions had been addressed directly to him.
Baker had followed, urging that the Senate should have greater powers than had been proposed. Clark answered on behalf of the committee and, as no other delegate wished to make general points, the committee stage began. Griffith urged careful consideration:

There is no hon. member in this Convention who is called home more urgently than I am; but notwithstanding that, and the great hurry which I am in to get home, I think that a great deal more harm will be done by rushing through business as proposed.

A majority of twenty-six to thirteen supported the name "Commonwealth", which Griffith supported as "a very good word indeed", although he had not liked it at first. Griffith's stylistic leanings were shown in his suggestion to replace "kings and queens" by "sovereignty". He could see no objection — indeed it was rather an improvement in sound "though it uses a word of four syllables instead of monosyllables".

The debate on the powers of the governor-general was somewhat sidetracked by Grey's motion that the representative of the Queen should be elected. Griffith voted against the motion because he feared candidates might become party nominees. The motion was defeated by thirty-five votes to three.

An interesting exchange followed Baker's proposed amendment to define more specifically the functions of the governor-general. Deakin thought it would be sufficient if it were provided that the governor-general had "invariably [to] act on the advice of his responsible ministers" even when ministries were changed. Griffith interjected, "He has got to turn out the first lot on nobody's advice". Deakin agreed, but as Griffith should know ("having gone through the process so often himself"), the incoming ministry invariably took that responsibility on its shoulders. Griffith was not convinced: "That is not acting on advice". Baker withdrew his amendment after Griffith pointed out the difficulties of listing the executive functions of the governor-general.

On the election of senators, Kingston moved that the method should be left to each state House to decide; Griffith wanted a homogeneous system. Believing that the Senate should be in direct touch with the parliaments of the several states, he gave a curious warning: "in the United States . . . the election of members to the state parliaments may often be determined by the views held by the candidates as to the proper persons to be elected to the Senate". The amendment was defeated by thirty-four to six.

A heated discussion developed on the qualifications of voters for electing members of the House of Representatives. Some states, including Queensland, still had plural voting. Speaking against a proposed amendment to have one-man-one-vote, Griffith explained that the committee had chosen the system of the United States, — whereby only voters qualified to vote in state elections could vote in federal elections — so as to avoid interfering with state powers. After Deakin pointed out that if the amendment were passed, no initial election would be possible, Barton suggested allowing elections under the existing state laws but providing that the commonwealth could legislate for uniform qualifications for electors. Griffith warned that the consequence might be the opposite of what democrats imagined. All amendments were soundly defeated.
Although Griffith opposed an amendment requiring that a candidate for the House of Representatives be an Australian resident for "at least three years before he is elected" (asking "why should we limit the electors of the states in choosing their members in the federal parliament any more than in choosing their representatives in their own parliaments?"), it was narrowly passed by twenty votes to eighteen. This was one of only two amendments to be accepted throughout this debate. The other, which Griffith also opposed, was a minor change in the timing of the return of writs for elections, carried eighteen to seventeen.37

When the federal parliament's legislative powers were under discussion on Friday 3 April, Kingston proposed the establishment of a federal court of conciliation and arbitration to help avoid "the magnitude of the recent industrial disturbances". Griffith did not give his views, though he thought such a court would be better included under the judiciary provisions of the constitution. Kingston withdrew his motion.

Griffith explained that the proposed immigration power was intended to be wide to enable governments to keep out Chinese, Hindoos or other aliens — even English, if necessary. It will enable them to impose conditions, if found necessary, such as America has imposed to prevent pauper and other undesirable immigration.

He later expanded his views on the power to make special laws for any race:

What I have had more particularly in my own mind was the immigration of coolies from British India, or any eastern people subject to civilised powers. The Dutch and English governments in the east do not allow their people to emigrate to serve in any foreign country unless there is a special law made by the people of that country protecting them, and affording special facilities for their going and coming. I am not sure that that applies to Japan. It might apply to the Government of China, but I do not know whether it does. I maintain that no state should be allowed, because the federal parliament did not choose to make a law on the subject, to allow the state to be flooded by such people as I have referred to.38

When the discussion moved on to the powers of the two Houses, Griffith explained that the intention was that all laws for the expenditure of money should originate in the lower House. As the arguments on the relative powers of the two Houses were repeated, Griffith declared his position:

I believe I am one of the persons referred to . . . as the state rights party. I expressed my opinion very plainly some weeks ago . . . but I have always felt in dealing with this matter that where there are two strongly opposed opinions in this Convention, unless we dealt with the subject in a spirit of compromise, there would be no chance of arriving at a conclusion.

The eventual vote on Monday April 6 of twenty-two to sixteen accepted Griffith's compromise. Dibbs was the only one of the twelve delegates from New South Wales and Victoria to oppose it; Queensland was divided (four to two); South Australia also was split (three to four). Kingston, showing his loyalty as a member of Griffith's inner committee, had changed his position, while Cockburn remained the strongest opponent, wanting the Senate and lower House to have equal powers. Tasmania was evenly divided (three to three), with Clark on Griffith's side; of the delegates from the
isolated colonies, Western Australia and New Zealand, only Hackett voted for the compromise (one to six). The dispute over the Senate was not over. When McMillan of New South Wales unsuccessfully moved an amendment, Griffith attacked him:

this subject after several days’ debate in the Convention, received the anxious attention of the Committee for several days and from every point of view, and they did not adopt this form of words without carefully considering every word . . . whatever merits there may be in this amendment . . . he has . . . not given it half the consideration which the committee gave their proposal.

After pointing out that McMillan’s amendment would in practice end the possibility of conferences between the two Houses, Griffith reiterated his text: "We shall never arrive at a satisfactory conclusion unless we meet in a spirit of compromise".

The discussion moved on to the second chapter of the constitution: the executive government. When Wrixon wanted to require that executive officers be "responsible ministers of the Crown", Griffith demurred: the suggested phrase was "really an epithet, but a bill is not the place for an epithet". Bray and Deakin were not convinced by Griffith, despite Clark’s support. Deakin believed that the power of the Crown was not defined — and indeed could not be defined in this constitution — but wanted a phrase conveying "without a scintilla of doubt to the ministers of the commonwealth all the powers which are possessed by ministers of the Crown in Great Britain". Griffith was puzzled, as "the powers exercised by the ministers of the Crown in Great Britain . . . do not differ in any respect from the powers exercised by the ministers of the Crown in any other country". Deakin interjected, "the powers of our ministers are limited, and theirs are unlimited!", which still puzzled Griffith:

The power is vested in the Queen. For the administration of that power, officers shall be appointed. What more can you say? Can you go on and say that when they are appointed they shall have power to do their duty, or say that they shall exercise such functions as are usually exercised by officers of state? It is all reasoning in a circle.

When Deakin conceded that what he really wanted was a phrase indicating that commonwealth ministers had power to exercise the prerogatives of the Queen, Griffith still found difficulties. Any phrase trying to convey "sovereign power to ministers" would be extraordinary words to put in an act of parliament . . . it is rather a singular thing to ask the Imperial Parliament to do for Australia a thing which it has never done for itself.

Ignoring Deakin’s interjection — "Of course not. They have no need; they have a vast reserve of power. Theirs is an unwritten constitution!" — Griffith continued:

to ask the Crown in one short sentence to surrender, in respect of Australia, all its prerogatives is rather an extraordinary thing to do. At this moment I believe no one knows what they all are.

If attempts were made to enumerate them, he argued, the omission of one would automatically exclude it. He turned to specific examples: "one of the
royal prerogatives is to declare war. What about that?". Deakin sought to distinguish Imperial interests: "we have no desire to interfere with the imperial prerogative in matters of war and peace!". Griffith, however, believed that

all the prerogatives of the Crown exist in the governor-general as far as they relate to Australia. I never entertained any doubt upon the subject at all . . . Certainly the putting in of such a phrase as has been suggested ought not to be done without very grave consideration.

After further discussion, Griffith suggested adding a phrase to the effect that executive officers "shall be the Queen’s ministers of state for the commonwealth". This was adopted, but did not survive later revisions.

When the discussion moved on to the third chapter, the judicature, Kingston repeated his suggestion of setting up federal courts of conciliation and arbitration to settle industrial disputes. Griffith, although wondering how this would avoid interfering with property and civil rights — powers over which had been left to the states — was not opposed to the idea: "I think", he said, "it is a power the federal parliament might very well have". He found it hard, however, to answer Fitzgerald’s practical and prophetic question: "Suppose the federal court gave a decision which was at variance with that of the courts of the various states, which would rule?", although he referred to United States precedents whereby both federal and state decisions had been executed in the same state. The majority of delegates considered federal intervention was premature, and they defeated the suggestion by twenty-five votes to twelve, with Griffith voting against it. Another close vote (nineteen to seventeen) decided not to change the recommended limited right of appeal to the Privy Council.

Debate on the fourth chapter, finance and trade, began on 7 April. Initially McLlwraith was more involved than Griffith in trying to avoid clashes between protectionist Victorians and free-trade New South Welshmen. In dealing with the vexed issue of surplus revenue, Griffith tried to explain to his Queensland treasurer why the Constitutional Committee had so drastically altered the proposals of the Financial Committee. His committee, which considered that the commonwealth might raise revenue not only from customs and excise but also from other sources, had eventually agreed that "the only way in which we could see it was fair to return direct taxation was in proportion to the amount raised". Although he believed a protective tariff was "very likely", other methods of taxation were possible:

I object to argue on the assumption that all knowledge is with us . . . we must, at least, admit the possibility of our successors being as wise, or wiser than we are.

A split vote, twenty-one to fourteen, agreed to charge expenditure in proportion to population and to authorise the federal parliament to alter the method of distribution of the surplus once "uniform duties of customs have been imposed".

In debating chapter five, the states, Griffith strongly defended the proposal that all communications to London should go through the governor-general:
one of the principal reasons for establishing a federation . . . was because . . . Australia speaks with seven voices instead of one voice . . . I maintain that Australia is to have only one diplomatic existence.**

The clause survived by a vote of twenty-two to sixteen on Wednesday 8 April.

The final day of committee discussion covered the remaining chapters. When the new states were discussed (chapter six), Griffith expressed his pessimism that all the existing states would accept the constitution. In discussions on altering the constitution (chapter 8), he stated that he preferred conventions to referenda.

That night Griffith revised the constitution to incorporate committee changes. Next morning, in moving its adoption, he stressed that in the committee stage there had been no changes in principles. His final verdict was cautious: "the probability is that it is the best constitution that could be framed with any chance of acceptance by the people of the colonies'". Dibbs requested Griffith to explain away his lingering doubts, and Griffith tried to calm provincial fears: the doctrine of "concurrent" powers retained much influence for the states, which would still be able to raise taxes. This led him to a remarkably incorrect prophecy: "I am sure the federal parliament would never impose direct taxation except in a case of great national urgency".45

Parkes, in his last gesture as president, was constructive, correctly anticipating that few changes would be made to the draft constitution. He was lavish in his tribute to his vice-president: "This bill, for the preparation of which . . . Griffith deserves so much praise, will be a document remembered as long as Australia and the English language endure". Grey, the final speaker, paid the strongest tribute to Griffith:

He was courteous to all; he was as industrious as a man could possibly be; he was as free to acknowledge any mistake that he had made in a proposal offered as the most innocent child could have been, so fairly, so freely, did he at once say, "I am wrong, I see it". I saw in him qualities which would adorn any statesman, and I formed the highest possible opinion of what he will ultimately attain to in Australasia.16

The convention adopted the constitution without a division, whereupon Griffith moved that the colonial parliaments submit it to their populations. He wanted their decision to be kept separate from party politics and other questions, and his personal opinion was that the constitution should be submitted to the vote of a convention elected for that purpose only.

When Bray argued that the bill should be submitted for the "consideration" rather than the "approval" of the people, so that they could suggest amendments, Griffith was horrified: "all our labours in the way of conciliation and compromise will be entirely thrown to the winds".47 Griffith's position was supported by a vote of twenty-four to seven.

In his closing remarks, Griffith thanked the Constitutional Committee, particularly Clark, Kingston and Barton, and he ended with an apology for sometimes being too insistent on his own views. The convention's long labours were over by 4 p.m. on Thursday, 9 April.

Griffith's day continued with an exhaustive cross-examination before the New South Wales Strike Commission. He sailed on the Lucinda at 12.30
p.m. on Friday and reached "Merthyr" at 2.30 the following morning. He returned to a colony where the pastoral strike had not yet been settled, and where enormous problems pre-empted any question of federation.

The next step had to be taken by New South Wales, and the tone of a letter from Parkes encouraged Griffith to be optimistic. But Reid's speech on 5 May was critical of both the constitution and of Griffith's conservatism. In an angry exchange of letters, Reid expanded his objections: the bill had "stretched the statutory provisions relating to the Crown, and the governor-general to an extreme". He listed nine specific clauses to which he objected, and told Griffith that he intended to make a similar critique of the bill in parliament. Griffith denied that any extension had been made to British power, and he resented Reid's strictures

of course all these ideas of mine may be quite wrong and the language critically examined may express the very opposite of what it was meant to convey. But granting this I do not think I am fairly open to the charge — one of the most offensive that can be made against a public man in Australia — of treacherously endeavouring to surrender the liberties of the people.

This is in effect the charge you have made against me. And as this is not a Colonial but an Australian question and your audiences are therefore not Colonial but Australian I think I am entitled to ask you to publicly withdraw this charge. Substitute for it any you please — ignorance, incapacity or inability to express my meaning in words and I will not complain, but let us fight the battle fairly and without the imputation of unworthy or dishonourable motives."

As for the immediate future of the bill Griffith was well aware that the debates by New South Wales politicians made progress unlikely, and he knew that Parkes was unreliable. He was notified in May that there would be no progress with the bill until August.

Parkes must bear a share of the responsibility for this initial delay, which was to assume mammoth proportions, lasting for not three months but six years. By August, Parkes was convinced that it would be impossible to consider federation. On 19 October, his ministry resigned after the Labor members voted against the government. Dibbs, the new premier, had little sympathy with either federation or this particular bill.

Griffith well knew that progress in Queensland depended on action in New South Wales. Although he had drawn up a bill for Queensland's entry into federation, he did not present it to parliament. It was no coincidence that his presidential address to the Queensland Geographical Society on 6 July 1891 was entitled the "Political Geography of Australia". In it, he defined political geography ("the branch to which my vocations more naturally lead me") as the "division of the world into nations". His answer to the question, "why is one people different from another?" drew from historical examples: although many nations of the great human race had a common origin, by living apart with little intermixture they had developed different habits, speech and modes of thought and "became at last entirely different".

Political divisions of the human race, he argued, had always tended to correspond with physical conditions. The histories of Greece, Switzerland, Russia and the United States of America showed how contiguous separate communities had joined together. The Australian colonies were bounded by only imaginary lines, and it was "unknown in the history of the world,
that such boundaries should constitute permanent lines of demarcation between peoples, ... [so] it is likely that these artificial boundaries will soon be over-stepped", even the long distance to Western Australia. He argued that "unless human nature is different in Australia from what it is and has been elsewhere, the inhabitants will most certainly become one people for the purpose of government, as they are already one people in blood".

Griffith proposed that "patriotism or love of country" (which he cautiously assessed as perhaps "only a sort of exalted selfishness") would lead eventually to a "feeling of regard for the people of one's own country rather than the people of other countries when they come into competition with us". Denying his Christian upbringing, he continued, "rightly or wrongly, we do not really regard all people on earth as brothers; we do compete with one another". In an ideal world, "a state of ... sublime perfection", competing patriotisms might vanish, "but at the present time this sentiment may be regarded as one that is useful, and in every way estimable".

Patriotism needed solid foundations: "a sense of attachment to something worth having, an attachment to something worth making a sacrifice for". He made a personal declaration — which ignored his Welsh origin and constant search for recognition there:

although I am not a native of Australia, I have been here nearly all my life, and in spirit I am as much an Australian as any man in it ... that must be our country; that is where our children will be born and brought up; and the mere recollection that our grandfathers or great-grandfathers came from another country, will not, I think, be a sufficient lasting foundation for the sentiment of Patriotism.

His conclusion was that "the political unification of Australia is absolutely inevitable. Nothing can stop it, unless the operations of nature and the laws of our common humanity should be changed."^48

While Griffith was in Sydney in January 1892 he saw Dibbs, Barton and Parkes. He went to Melbourne and Adelaide, and on his brief return to Sydney, received a conspiratorial note from Parkes.

I think it would be well if we could have a conversation on the subject of the union of the colonies before you leave Sydney.

Could you have luncheon with me quietly here [in Balmain] at half past one or two o'clock. My continued infirmity makes it difficult for me to get about. I feel sure that a great step will be taken in Federation before I see you again.^49

Griffith lunched with Parkes that day, but his diary does not record their discussions. He had seen Dibbs on the night of 29 January, and again the following morning before he left for Brisbane.

Nothing resulted from his Sydney discussions, for Griffith mentioned federation only once in the comprehensive coverages of Australian affairs included in his letters to Jeanie Musgrave in 1892, and then only, almost incidentally, as an additional reason for his staying in politics: "the question of Federation on which all the Colonies have looked to me for help".\(^42\)

In March 1893, Griffith left politics. As chief justice, his pronouncements had to be circumspect. He was pressed to speak and to write on federation, but usually refused. When the editor of the \textit{Bacchus Marsh Express} asked him in 1896 to compile an epitome of the 1891 Bill, he declined.\(^51\)
Griffith did, however, give the 1896 presidential address to the Brisbane School of Arts on the "Finances of Federation". It was an analysis of unsolved financial obstacles rather than a popular exposition of principles. He tried to show how the 1891 plan for returning surplus revenue might have worked in practice if federation had been achieved by the financial year 1894-5. Using ten tables of figures, he considered the ways the colonies might have been affected, presupposing the commonwealth had adopted certain methods of raising revenue, and had taken over colonial debts.

Griffith's speech focussed on two of the most serious obstacles in the way of federation: the ignorance about the probable financial effects of federation; and "the comparative want of acquaintance . . . of Australian public men with other colonies not their own". Readers of the printed speech found his tables hard to digest, one proposing "to read them again with a course of Pa Paw . . . to promote their absorption . . . I am not quite sure that . . . your paper is calculated to diminish the obstacles".

Griffith told Jeanie Musgrave he was amazed at the "profundity of ignorance" on federation and went on:

if the founders of the U.S. had known no more than the loudest voiced politicians of the conditions of Federal Government . . . the American constitution would have been an absolute failure, if it had ever been established . . . I think that a maxim, which I have frequently used "stupidity accounts for most things that go wrong" is the proper explanation . . . the prospect for an Australian Commonwealth is not bright.

Barton kept Griffith in touch with the activities of other federalists, for instance by sending him the report of the Select Committee of the Australasian Federation League which had agreed to adopt Dr Quick's scheme to bring people into the federation process. It culminated in the election of delegates to conventions, which began in Adelaide in March 1897, to resume their 1891 efforts to find compromises acceptable to all colonies. This time Griffith was absent, as was Clark; Parkes was dead; neither Queensland nor New Zealand was represented. Griffith was pessimistic, the federation movement was "going all wrong . . . I sometimes wish I could take a hand in the game, but of course I cannot".

Reid played an important part at the Adelaide convention, which met from 22 March to 23 April 1897. On a visit to Brisbane in April 1896, he had met with Griffith, but there is no record of their conversations or of whether they corresponded between 1891 and 1898. Griffith had more in common with other delegates, especially Wise of New South Wales, who had been his guest on the Lucinda in 1891. Wise urged him to resume his role in the federation movement: "I wish you could come . . . south before the convention elections come off as no Colony needs guidance more than N.S.W. at the present juncture. If you could not speak yourself, I would like to be your mouthpiece".

Griffith was consulted during the Adelaide proceedings. He had written to some delegates, including the South Australians, advising them to insist on the Senate's right to amend money bills. Baker wrote to him reporting differences in the Constitutional Committee, and concluded: "We miss you very much".
Griffith was also consulted by telegram on 1 April by Josiah Symon, chairman of the ten-man Judicial Committee. He wanted Griffith's opinion on whether state courts should be authorised to exercise original jurisdiction in federal matters, and whether parliament should set up other federal courts. Griffith replied through J. T. Walker, another member of the Judicial Committee, that he believed it necessary to give "original jurisdiction in cases against officers of Federation and between States". For other cases, federal parliament should have the power to legislate to give state courts jurisdiction. Barton assured Griffith that this advice had been welcomed, and told him that he was often heartsick about federation:

If you were here — would to God you were! — you would understand, and would agree with me.

We miss you very much — but it is I who miss you most of all. I am working very hard, and the difficulties have increased since 1891.

Downer, writing a week after the close of the convention, told Griffith of the continuation of the discussion on the Senate's power to amend money bills, the result being that "the bill remains as in 1891". Griffith carefully read all public reports from Adelaide and, as soon as he received a copy of its draft constitution, began writing a criticism, which he completed on 24 May. A copy was presented to the Queensland parliament, 500 copies were distributed to members of the convention and of the various Australian legislatures, and an abbreviated version was published in the *Review of Reviews* in July.

Griffith's criticism of the style of writing (and use of cataloguing) hurt Symon, who saw Griffith's remarks as "spiteful as though he resented his own work . . . being so much re-cast". Symon was sure that "as a piece of draftsmanship the Bill of /97 is immeasurably superior to that of /91", and was not to forget Griffith's strictures. Later critics supported Griffith; La Nauze referred to his "lofty corrections of the words of the later and lesser draftsman of 1897".

Besides general criticism of attempts to control the freedom of the federal parliament, and neglect of the constitutional role of the sovereign "as the head of the Federation", Griffith specifically (as a "most friendly critic") opposed the direct method of electing senators. The people of a state "equal in size to France, the German Empire and Austria-Hungary combined" should not form a single constituency.

As in 1891, Griffith argued that some delegates were mistaken in believing that the maintenance of responsible government was largely dependent on giving paramount powers to the lower House with respect to money bills. He believed that the exclusive right of originating supply bills and the power to refuse supply were the real bases of the power of the lower House. He prophesied that the use of the Senate's power of veto would depend on their resoluteness, which in turn would depend on public opinion. He warned that if the Senate were given no power in choosing the executive, the less populous states would be upset.

Griffith was also critical of financial clauses: the provision requiring the commonwealth to impose customs duties within two years, the compromise for distributing surplus revenue; and the limitation on commonwealth expenditure.
With a letter to R. R. Garran, the secretary of the 1897 drafting committee, Griffith enclosed a copy of the draft with his comments in the margins. Garran took these seriously, making notes on them. Others, including colonial parliaments, were critical of the 1897 bill.

Griffith regretted he had not been at the Adelaide meeting, and probably encouraged moves to enable him to attend the planned Sydney September convention. But these moves proved abortive when the Queensland parliament, which reassembled in June, again declined to send any delegates.

Griffith received no letters from delegates during the second Sydney session (2 to 24 September). Its thirteen sitting days were occupied in dealing with the criticisms from the various parliaments, the Colonial Office and other sources, including Inglis Clark and Griffith. Eventually most questions were deferred to the Melbourne session (20 January to 17 March 1898), of which both Baker and Deakin gave Griffith details. Some delegates still hoped that Queensland and Griffith would belatedly join this final Melbourne session. Dobson of Tasmania wrote two months after the Sydney meeting to express his "great disappointment" that Queensland would not be represented, and particularly that Griffith's "able advice and assistance" would be missing. The delegates agreed that the bill would be submitted to popular referenda.

One constitutional change, advocated by both Griffith and Clark, was that members of parliament could be appointed to such public offices as justiceships of the planned High Court. Griffith was aware of some of the discussions about these particular positions. Judge Boucaut, for example, told him on 17 December 1897:

> Way [South Australia] would be your most dangerous competitor for the Federal Chief Justiceship — Madden [Victoria] is out of the question and Darley [New South Wales] not nearly strong enough.

Another potential rival was Symon, who as a parliamentarian was more likely to be affected by this change. It did not seem immediately relevant to Griffith, who was told by Boucaut: "You could have no chance of the Federal Chief Justiceship if Queensland should not come into the Federation".

Queensland and Western Australia did not vote in the federal referenda of 3-4 June 1898. In Victoria, South Australia and Tasmania the majority of the electors favoured the bill, and the set quota of votes was reached. In New South Wales, although there was a small majority in favour, the "yes" vote was below the set quota.

Griffith was ill for the last two months of 1898, which prevented him playing an active part in discussions on federation. The Queensland Federation League invited him to be its president on 16 December. Throughout Australia, little progress towards federation had been made. After the referendum in June 1898, Reid had tried to arrange a premiers' conference, but Queensland's premier, T. J. Byrnes, and the other leaders had refused to meet. Reid had just managed to survive a strong challenge from Barton in the colonial elections of 27 July, and when he renewed his approach to the premiers in December 1898 he was far less peremptory than he had been in June. He detailed, in a telegram in early January 1899, several concessions that he hoped would satisfy some of the New South Wales
Federation 207

opposition. Griffith may have influenced the telegram's contents or style, for he had called on Reid in Sydney on 4 January and then lunched with Reid and Barton. He saw Braddon in Hobart, and also Wise and Inglis Clark and others of the Tasmanian federation delegates of 1897 [H. Dobson, A. Douglas, N. J. Brown, P. Fysh, W. Moore and N. Lewis].

While Griffith was in Tasmania, the premiers accepted Reid's invitation to meet in Melbourne on 29 January. It was hardly coincidental that Griffith reached that city on the same morning. He saw Dickson and Forrest that day.

On the thirtieth, he lunched with all of the premiers at Parliament House. It is unlikely that he maintained his judicial detachment either during this meal or in his earlier discussions with the premiers and other federation delegates. While in Melbourne, he met with Victorians involved in the movement, including Deakin, I. Isaacs, Service, H. Wrixon and Casey, as well as the New South Wales statistician, T. Coghlan, whom Reid had brought south with him, and the secretary of the 1890 conference, G. H. Jenkins. Griffith remained in Melbourne throughout the 1899 conference, which sat until 3 February, and had frequent meetings with delegates, returning to Sydney in Reid's special carriage. The deus ex machina of the 1897 conventions was undoubtedly in the centre of action in 1899. Perhaps Griffith had a hand in drafting the eight decisions that were inserted in the constitution in precisely the words agreed to by the premiers. 66

As president of the Queensland Federation League, he accepted an invitation to speak at the Brisbane School of Arts. His paper, given on 26 May 1899, was entitled "Australian Federation and the Draft Commonwealth Bill". He openly admitted his motives:

although I am debarred by circumstances from any active advocacy of the cause of Federation, I had something to do with the inception of the movement, and have ever since freely exercised my right to take part in the public discussion of the question. Moreover I have heard on all sides the expression of a desire that a plain exposition of the Convention Bill should be given by some one especially familiar with the subject.

Griffith assumed that the people of Queensland would shortly be asked to vote, so had framed his paper "to assist my fellow colonists in arriving at an independent and intelligent conclusion". He then offered to those "of open mind" some reasons why Australians should federate, following them with a balanced history of the federal movement since the 1890 Melbourne conference.

Queensland had been present at the 1899 conference of "all the Australian Prime Ministers" when certain amendments had been made, two of them at the instance of J. R. Dickson. Griffith made no mention of his own presence in Melbourne at the time, and in context there was no reason why he should have. His overall argument was that Queenslanders had had "no inconsiderable share in the framing of the Constitution" especially as "suggestions made from Queensland" during the 1897 convention had been carefully considered and in many cases adopted (again, he had no reason for boasting that most of these were his own suggestions).

Because of the degree of support given elsewhere in Australia, Griffith
argued that the practical question for Queenslanders was not whether or not to federate but whether to accept or reject the bill in its present form. He reviewed the likely effects of federation on Queensland, stressing the retention of state powers and such financial advantages as the ending of border duties and the expansion of markets for “cattle, sugar, and all kinds of tropical products”. He believed it unlikely that New South Wales and Victoria would vote together; indeed he saw most divisions following party rather than territorial lines. The choice was between becoming “citizens of a great Australian Dominion” or remaining “a small and separate community . . . at the mercy, in many respects of a powerful and overwhelming neighbour”.67

Griffith’s address was featured in the Queensland press and, at Dickson’s request, was presented to the Queensland parliament. It is hard to estimate its influence amidst all the conflicting viewpoints presented to the Queensland voters. It probably swayed the government in deciding to hold a referendum on 2 September. The affirmative popular vote was 38,000 to 31,000. As New South Wales had reached the required “Yes” quota, and popular support was strong in Victoria, South Australia and Tasmania, it was now certain that the Australian colonies would federate and that Queensland would be one of the original states.

Griffith was to be much involved in the final stages of federation, in trying to help Western Australia’s case for joining, and in the discussions on appeals to the Privy Council. In October 1899, Forrest sought advice from Griffith when the Western Australian Legislative Council rejected all federation proposals. Forrest thought he could get the bill passed if the other colonies helped. Griffith replied at once in favour of Western Australia joining. Although Forrest was impressed by his arguments, he was nonetheless pessimistic:

> the only chance . . . of our joining as an original state, is, that the Eastern Colonies should inform me that they will not object, or will approve of the Imperial Parlt. making the amendments required by Western Australia.

Forrest wanted Griffith to aid him politically: “If you see Dickson . . . tell him my views”.68

Griffith’s intervention with Dickson and the new premier, Robert Philp, proved unsuccessful, as did other attempts to arrange a conference between the colonial leaders. It seemed that Western Australia would be left out of the federation. Forrest’s last hope was that Western Australia would persuade the Imperial government to press the other colonies to agree to special terms.

Griffith was lieutenant-governor of Queensland for six months from the end of September. He acted officially in the federation movement after the Queensland Legislative Council voted, by sixteen to nine, to request the Queen to enact the Constitution Bill. Four of the other colonies had earlier passed similar motions. Griffith wrote confidentially to the secretary of state for the colonies, suggesting two alterations in the draft constitution and claiming, somewhat surprisingly, that he had

> reason to believe that the people of these colonies would gratefully welcome any suggestions that may be made by Her Majesty’s advisers with the view of perfecting this most important instrument of government.”69
He assured London that he was not acting improperly, since the Queensland premier (Dickson) concurred in the terms of his despatch.

Griffith suggested that the section allowing parliament to increase or reduce the numbers of the House of Representatives be omitted, because another section fixed the number in this house at twice that in the Senate. To destroy the relative proportions would be "a complete subversion of the constitutional compact intended to be embodied in the Draft". His other comment was that the federal powers over trade and commerce seemed inconsistent with state powers to levy harbour dues.

The result of Griffith's letter was that he was asked by the Colonial Office to try to achieve agreement that the delegates would have the power to assent to alterations. It was made very clear that his was a delicate mission: "please communicate with other colonies in whatever way you think that any appearance of dictation or interference by H.M.G. may best be avoided".70

Thus Griffith was virtually invited to act — albeit at his own instigation — as an undercover agent of the British government, a position that helps explain his role after the Australian delegates reached London in March.

Griffith's telegraphed reply was cautious. He did not think it expedient that he should communicate with the other colonies. So far no colony had suggested sending a delegate to London, and if one did so, it would probably be rejected by the others. He believed, however, that a suggestion from the Imperial government that delegates be chosen would be accepted. The invitation should be by despatch, not by telegram.

The Colonial Office did not send a despatch, as time was too short if the promise to bring in an Imperial bill early next session was to be fulfilled. Instead, it asked the governor of New South Wales to arrange for delegates.71

A premiers' conference in January 1900 agreed that one delegate should be appointed by each colony, but that each was to be regarded as representing all the federating colonies. The five men chosen were Barton (New South Wales), Deakin (Victoria), Kingston (South Australia), Fysh (Tasmania), and Dickson (Queensland). They were joined by S. H. Parker, a barrister appointed to argue Western Australia's case for special terms, and by W. Pember Reeves, the agent-general for New Zealand, which was investigating similar concessions.

The delegates were to meet English representatives in London in March 1900. Griffith influenced their consultations in several ways. In November he wrote an article on federation for A. Bruce Smith, the editor of the new journal United Australia, whose board of management was presided over by Barton. He sent an advance copy of his article to the Colonial Office. It raised several matters of practical detail that should be settled before federation.72 He sent to the Colonial Office copies of his recent correspondence with Forrest about Western Australia joining, and he wrote pressing it to invite a delegate from Western Australia. Forrest had come to Queensland in January 1900 especially to see Griffith. Griffith was confident that the opposition would be overcome if the British government showed a "strong desire that Western Australia should be included in the federation".73

Griffith continued his active involvement after Dickson was appointed
as Queensland's delegate. He reported to the Colonial Office that Dickson had been instructed not to oppose changes. He appears also to have briefed Dickson, who wrote to him:

Since leaving Albany I have had leisure to reperuse carefully your "Notes on the Draft Federal Constitution of 1897" and to compare your suggestions with the amended Draft Constitution of 1898 [Melbourne]. I observe that a very great number of your valuable amendments have been either wholly or partially adopted, and I really think that very few men in Queensland or indeed in Australia fully realise or recognise the obligation all Federated Australia will ever be under to you for bringing the present Constitution, imperfect even yet it may be, into a vastly improved form.

Barton had given Dickson the criticisms of the 1897 draft made by the Crown law officers (shown to Reid in London in 1897 but not disclosed to Barton until 1899). "The criticisms", Dickson told Griffith, "follow the lines of yours, but are stronger in Imperialistic tendencies and some have been introduced . . . in more moderate form in the 1898 draft. So I presume Reid made use of part privately". Dickson had also read "very carefully" Griffith's confidential despatch to Chamberlain of 19 October on Western Australia's entry.74

Forrest told Griffith on 8 March that Reid had written to him asking what was the minimum alteration to the constitution he would accept, and commented, "this looks as if he were more open to reason". Reid later told Griffith that he had written to Forrest on his own initiative, before he received a confidential letter from Griffith [dated 26 February] urging support for Forrest. Reid thought the news that the British government planned to consult with the delegates on the details of the bill was "serious". In his letter to Griffith, Reid disclosed that he had brought out from the Colonial Office in 1897 a schedule of criticisms of the constitution (which Griffith already knew from Dickson). Reid had handed it to the 1897 Sydney convention.75

A series of telegrams was exchanged by Griffith and Forrest between 27 March and 4 April. Griffith urged a sitting of the Western Australian parliament to obtain a pledge from it in favour of a federation. Understandably, when the Colonial Office requested the views of the Queensland ministry on including Western Australia as an original state, Griffith's reply not only passed on his government's concurrence in whatever action might be necessary, and its consequent instructions to Dickson, but also gave his own view that further reference to a popular vote did not seem necessary.76

Griffith was even more concerned with the central issue of debate in London: the extent, if any, of appeals to the Privy Council. In February 1899, he had received a letter from Boucaut seeking support in a campaign by chief justices throughout Australia. Boucaut had taken the initiative because Way was ill. Boucaut wanted to retain appeals to the Privy Council, as

in heated times, embittered politicians could be more prone to yield implicitly to the Privy Council than to a Supreme Court, however able, constituted by Judges from perhaps vehemently opposing colonies.77

Griffith had not immediately promised support, although he kept in touch
Federation 211

with Boucaut and shared in his constant speculations about the future High Court. Thus in July 1899 Boucaut had examined the chances of Griffith, Way, Darley, Barton and Symon; in September 1899 he had changed the field to Griffith, Reid or Kingston.\(^7\)

In January 1900 Darley wrote directly to Griffith:

> I trust ... the position of the Privy Council as our final Court of Appeal will not be disturbed — I can (as I feel very strongly on this subject) — ... [only hope] that this blot will be removed in England.\(^9\)

Way, too, was actively campaigning for the retention of appeals, and there had been debates in the South Australian press where Symon accused Griffith of changing his views on appeals and claimed that Griffith wanted a seat on the Privy Council. In April, Griffith assured Way that, although he had "never publicly expressed any opinion on the point ... I have made no secret of ... [being] in entire accord with yours ... I hope Mr Chamberlain will not give way to the point".\(^8\)

On 11 April Griffith telegraphed that his ministers wanted publication of the Colonial Office's reasons for wishing to maintain appeals. On 25 April, the day before he ceased acting as governor, he gave the secretary of state his view: "so far as I can judge there is a great preponderance of public opinion throughout the Australian colonies in favour of acceptance of the suggestions of H.M. Government as to appeal to Privy Council".\(^8\)

He added a reference to Australian support for Western Australia's entry. From 27 April, official communications from Queensland were signed by Lamington, but extant drafts in Griffith's handwriting show he probably instigated some.

Proceedings in London reached a crisis after two months of debates emphasised the extent of the division between the British view and that of all the delegates except one. The odd man out was Dickson, who had written to Philip as early as 23 March, "I think I have Chamberlain's private ear re Appeals to the Privy Council being maintained but that of course is in strict confidence".\(^6\) Dickson had refused to sign two of the three memoranda submitted by the Australian delegates, and instead he had written a letter detailing his disagreements and declaring in favour of the amendments proposed by Chamberlain. Dickson, as did Griffith, accepted the British amendments, which had apparently been compiled by the law officers.

The debate had been conducted both in private and publicly in the press and elsewhere, as Deakin pointed out:

> the three delegates [himself, Barton and Kingston; Fysh remained on their side but less actively] ... deserted in Australia and officially opposed in London ... constituting themselves missionaries preached the gospel of the Bill without amendment, no matter what toast they proposed or replied to or what the nature of the gathering might be.\(^43\)

After one of these speeches at the Colonial Institute, where Deakin admitted that "being challenged and contradicted ... [he] broke into a fiery harangue", the Queensland government officially protested to the secretary of state for the colonies. Its telegram stated that the Queensland government was "indignant" at Deakin's attitude, and "strongly urged"
the inclusion of an amendment in the bill to allow appeals to the Privy Council without reference to local parliaments. It claimed that the people of Queensland and the chief justices of South Australia, New South Wales and Queensland were all in favour of the proposed British amendments. The phrasing suggests that Griffith drafted this protest, although officially it came from the ministry and was signed by Lamington. The Colonial Office weighed this protest cautiously. At Chamberlain’s request, Lamington agreed to its publication, although he wanted it toned down slightly by substituting “astonished” for “indignant”, and “are in favour of” for “strongly urged”. He assured Chamberlain that the three chief justices had consented to the use of their names.

So far as Western Australia was concerned, Forrest finally capitulated at the London discussions. He telegraphed Griffith on 4 May:

having failed to obtain alterations required in Commonwealth Bill in order to enable our finances to be protected I have decided to submit Bill as agreed to by other colonies to a referendum and parliament has been summoned for May seventeenth.

Forrest concluded by thanking Griffith for all his generous, albeit fruitless, assistance. The referendum held in September 1900 showed a majority in favour, particularly on the goldfields. Ten days later, in London, Chamberlain introduced the Federal Bill, shorn of clause 74, the appeals clause, into the House of Commons. In insisting on this omission, he was relying on the evidence that showed how divided opinion was in Australia. That very night, however, Chamberlain suggested a compromise to Barton and Kingston: while there would be no appeals from constitutional cases of distinctively Australian interest, appeals to the Privy Council would be allowed when Imperial interests were concerned.

During the next few days, various attempts were made to draft an appropriate clause, and on 19 May, Barton’s version was sent to the Australian premiers. To make sense of Griffith’s reaction to it, and of his part in its rewording; it is cited here in full:

No question howsoever arising as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the constitutional powers of any two or more States shall be capable of final decision except by the High Court and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government or Governments concerned, to be signified in writing by the Governor-General in the case of the Commonwealth and by the Governor in the case of any State.

Dickson sent Griffith on 21 May, a confidential telegram that included this text, telling him that “the Secretary of State will only adopt this on acceptance by all colonies interested. Your consideration and views therefore requested”. A telegram signed by Lamington was sent the same day, recording Philp’s and Griffith’s strong objections to Barton’s amendment, and concluding: “as far as I know colony practically unanimous in support of Chamberlain’s version. The next day another telegram, again signed by Lamington, reassured Chamberlain that the Queensland government desired that the British amendments should be final and conclusive, and that no further referendum was desired.
After Griffith received the text officially from Philp, he prepared a memorandum for the governor. Although it was dated 26 May, and was written on "Merthyr" stationery, he had dined that night at Government House, and probably wrote it there. Certainly its contents were discussed with Lamington. It was sent to London on 31 May. "The proposed provision", he wrote to the governor, "appears to me of so extraordinary a nature that I feel it my duty to send Your Excellency the accompanying memorandum".

Griffith thought the clause was "ambiguous and inadequate". From the experiences of the United States and of Canada, he believed that questions as to the limits of the powers of the commonwealth and the states would generally arise when the validity of statutes was argued in litigation between private persons in the state courts. If there were no appeal, which was optional, the state court decision would be final. Griffith was sure the amendment was not intended to deprive suitors of the right of recourse to the state courts in such cases. If it were really intended to take away the right of direct appeal to the Privy Council, it should expressly say that no appeal would lie except to the High Court. The colonial legislatures might or might not be willing to accept such an amendment, but were entitled to be consulted. He concluded that it was also "difficult to see how in any case the rights of a private suitor to appeal to the Privy Council can be made dependent upon the consent of an Executive Government".

On 28 May, Griffith expanded his official statement in a letter to Way:

The present situation is deplorable. Mr Chamberlain has allowed himself to be frightened by the delegates into doing what is in no way desired by the Colonies generally.

I gave him fair warning of the attitudes they would take up — of uncompromising hostility to any amendment whatever, and told him, both before they started, and at the very end of my administration, that in this they did not represent Australia.

Way and Darley intensified their campaign against the delegates. They organized deputations to the colonial governments, and telegrams from judges to the colonial governors. Wise and others warned Griffith of the dangers of this campaign: it could stir up "the slumbering anti-federal feeling . . . your letters and Way's are being used as instruments of evil in a manner you would be the first to deprecate".

Griffith ignored these warnings. His proposed amendment of Clause 74 was sent to all the delegates and to the appropriate British authorities. He suggested adding either the phrase "The Queen may direct that an appeal shall be brought to herself in Council", or "no appeal shall be permitted to the Queen in Council from the judgement of the High Court or any other Federal Court in exercise of Federal jurisdiction as on any question howsoever arising touching the limits" unless the High Court, rather than the government, should so certify. Griffith believed this would be "a true compromise not open to the very dangerous objection to altering Draft Bill in a material point without the consent of the Colonies or against their wish".

On 16 June, the Queensland ministers sent a further protest through Dickson against the British-amended clause 74, and asked that its consideration be postponed until the colonial governments could confer. The Col-
Onial Office advised that it was too late to consider such a postponement. In fact, Griffith's suggested rewording of the clause had been accepted, and Chamberlain was to express gratitude for the Queensland chief justice's help while he was moving clause 74 in the House of Commons. The final version read:

No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.93

Griffith was satisfied by the result, telling Way:

I feel much relieved at seeing the present clause. It leaves the right of direct appeal to the P.C. from the State Courts absolutely untouched except so far as the Federal Parliament may affect it by legislating under S.77.

I feel quite tired by the strain that I could not help feeling while the matter was unsettled, but I have 4 weeks of vacation before me to recover.94

Griffith seemed sincerely to believe that he had majority opinion on his side, or at least that his suggestions were the most logical proposed. He told Way that Symon 'owes me a public apology', but he was now ready to drop out of the debate.

It was reopened in July when Clark, who had waited until the issue passed from 'the region of political disputation into the calmer realm of constitutional law', published a refutation of the chief justices' arguments.95

Clark defended an Australian court of final jurisdiction on the grounds that it would aid national consciousness. Such a court, with its knowledge of local circumstances and conditions, would be preferable to 'a distant tribunal whose members are entirely ignorant of those'. Clark expected opposition from two classes. The first was of those who found it impossible to believe that judges trained outside the United Kingdom could be 'equal in mental capacity' to those trained inside ('to be born and trained in either America or Australia is to such persons an immediate mark of mental inferiority'). The second class was of those

who do not cherish any strong or very definite Australian sentiment on any political question, and who imagine that the body of law administered by the courts in England and in Australia is a compact system of knowledge and doctrines in which a man can become an expert in the same manner as he may become a master of mathematics or of a particular system of dogmatic theology.

To Clark, both were misguided: Americans and Australians were not inferior; the life of the law was not logic, but experience, in support of which he cited Oliver Wendell Holmes:

the law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

Griffith would have resented being classified in either of Clark's classes. He was eventually strongly to attack the concept of colonial inferiority, and
he would have described himself as being an Australian applying law as experience. Griffith's immediate reaction was to claim he had little respect for the Privy Council, that he had had no sympathy with Way's methods, and that he had intervened because of Barton's amending blunders. Nevertheless, his allies in the 1900 arguments had included many indisputably guilty of Clark's charges.

For Griffith, there was a significantly related entr'acte between July 1900 and his transfer to the High Court — the Sydney celebrations of federation on 1 January 1901. Surely he must have been aware of the irony of his diary entry for that day: "Went to State Banquet in evening and proposed the toast of 'the Commonwealth'. Appointed a Privy Councillor". Or was it possible that the balanced lawyer could celebrate both events without perceiving any clash, or without any memory of the frantic search by his opponents a few months ago for evidence of steps to appoint him to the British court? The balanced view is supported by other diary entries — on 29 December, his first day in Sydney, he met with the leading protagonists on both sides: Chief Justices Way and Darley, the London delegates Barton and Deakin, as well as lawyers Pearson and Clark. He had corresponded with Clark on undecided constitutional points, including the summoning and opening of the first parliament, which was a matter he raised with the new governor-general, Lord Hopetoun, with whom he lunched on New Year's Eve.

Griffith's political skill, rather than his legal or gubernatorial roles, led to another contretemps. He had been seeking selection to the potential federal government, and had been sought as a candidate, which explains his interview with Lyne on 30 December, and a longer session the next day with "Deakin in hotel (Australia) in evening till midnight". He returned from Sydney with no firm offer, which may help to explain a most untypical entry in his diary on 12 January, the day of Dickson's funeral in Brisbane: "The Queen on Barton: 'a fathead'. Barton on Dickson 'a prating Cockatoo'". It is a revealing piece of evidence of how far the fifty-five-year old ex-premier had been ruffled by the 1900 furore and its revival at the 1901 celebrations. In January 1901, and for several years afterwards, Griffith could well have believed that he had missed his opportunities not only to become a dominant federal politician (where the 'fathead' Barton a man whom he believed to be his inferior, both as a lawyer and draftsman, was leader), but also to be the future chief justice (where again, ironically, Barton was his chief rival). These disappointments may help to explain his attitude to Barton in 1919. But that was well in the future; in 1901 his prospects seemed to have narrowed to the Bench in Brisbane.
On 13 March 1893, Griffith's resignation as premier of Queensland was accepted and he received his commission as chief justice. He was formally sworn in the following day, and on the 15th began his new functions, working in the judicial chambers "all day". One of his first tasks was to order robes and court dress, for he saw the trappings of each of his roles as important. As soon as he had received his new robes he arranged to be photographed to perpetuate his image. The legal profession honoured him at a luncheon on Saturday 25 March.
Griffith told Jeanie Musgrave on 21 March that he could “now look forward to comparative rest and leisure, though I find that I shall have quite enough to do to occupy me during working hours of reasonable length”. He admitted to being still “sorry that I have had to give up public life at a time when the field of work had become so much larger and more interesting than it used to be. I think however that I shall find my new work quite congenial, and, I hope, useful”.

Griffith hoped that his previous political image would be untarnished: he spent the Friday of his first week as chief justice in “sorting and destroying letters”. Obviously his political influence did not immediately disappear when he was translated to the bench: he saw McLwraith shortly after his return from India and W. H. Wilson on his return from England, and his frequent discussions with the governor must have included political matters.

Griffith was in chambers on most weekdays, as well as Saturday mornings, and he first sat in the Full Court on 5 April. His initial country circuit was to Maryborough [10 April] and Bundaberg [13 April]. A routine was soon established: regular court sittings and attendance at chambers in Brisbane in the three legal terms, interspersed with occasional circuit sittings throughout Queensland.

As chief justice, Griffith enjoyed much longer breaks from his work than he had experienced as premier. His diary records only one visit to his chambers in the nearly seven weeks between 27 December 1893 and 12 February 1894, and in this summer he replaced constitutional conventions or Federal Council meetings with relaxation at Sandgate, Toowoomba and Jimbour. He “liked the change and rest very much”, for “the first time for over twenty years” spending this period in Queensland. He walked as much as possible on this holiday, including going on treks on mountain tracks near Mobilau, where on two successive days he and his companion lost their way in thick scrub and did not get back until after dark. As well, he went riding, and sailing on Moreton Bay.

Griffith was with his family far more than in the previous years, although his elder children were now close to leaving home. On 6 February 1894 “T. H. Brown asked [and obtained] consent to engagement to Eveline”. Griffith believed it was a “very satisfactory match. He is young, bright, intelligent, able to give her a good home, and I think extremely fond of her”. The next day Llewellyn left by train for Sydney en route to England, where he planned to continue his engineering studies for two or three years. McLwraith, about to visit England, had promised to help him.

As head of the judiciary, Griffith’s first task was to restore the prestige of Queensland’s Supreme Court after Lilley’s erratic judgments. His early decisions were lengthy and pedantic. Many of them are recorded in the Queensland Law Journal and Queensland State Reports and his notebooks include reports of sittings in chambers. Griffith took notes both on legal points made by the barristers and on facts given in evidence, carefully recording his own actions and the answers to his direct questions: “I sum up”, “I leave the following questions to the jury”, “I refuse non suit”, “I admit”. Listening to the variety of matters that reached the court kept Griffith in touch with the reality of Queensland life, especially when on circuit in remote towns such as Normanton or Cooktown.
An extract from Griffith's judge's notebooks.
(Courtesy of Queensland State Archives.)
The statistics of reported cases reveal that he sat in a total of 413 cases in the decade, but most of his circuit cases were unreported (except in local newspapers) and many chamber hearings were also not recorded.

Soon after he became chief justice, Griffith commented that he preferred "the office of Prime Minister", and that he was less busy than when a politician, but these assessments may have altered by the time he was fully engaged in his major achievement in law reform: the codification of the Queensland criminal law. Reference to this work appears in his diary from 1896 to 1900. It involved much reading in criminal law of many nations as well as close study and detailed drafting of Queensland's law. The first entry on 5 March reads: "worked at Criminal Digest in afternoon", and twenty-two similar entries follow until the first revision was completed on 27 April. The second revision was ready by 8 May. He began work on the Criminal Code proper in October (from the 15th), making regular entries until he "finished Ms of Cr. Code [offences]" on 29 December 1896. He continued to work on it throughout 1897, completing the draft on 25 March, the second revision on 29 July and a "final revision" in an all-day session on 19 August. By the end of November, the introduction had been written and the manuscript proof-read and indexed. Following meetings of the Criminal Code Commission in February-April 1899, he revised the rules and forms until August of that year. Appropriately, while acting as governor in November 1899, he assented to the Criminal Code Act. In 1900, he worked on writing the criminal rules.

The Queensland Code, prepared over five years, was Griffith's major, though not his only, contribution to law reform: in 1894 he revised matrimonial jurisdiction rules; in 1895 the probate rules, and in 1902 general Supreme Court rules.

Judges can rarely choose the cases that they hear, so an analysis of the 413 reported cases in which Griffith presided may, then, tell more of Queensland society than of his own preferences or interests. In addition, classification of cases into single categories must be arbitrary, since many involve more than one field of law. Subject to these reservations, groupings help to indicate the fields in which he had to pronounce decisions. The greatest number involved the interpretation of statutes (67 cases) followed by practice (66), criminal (56), insolvency (53), and probate (48). The remaining cases involved property (27), mining (24), domestic (23), contracts (18), admission (16), political (7), foreign jurisdiction (7), and admiralty (2).

As chief justice, Griffith was the touchstone for the rule of law in Queensland. His passion for accuracy and precision of thought were based on a comprehensive and exact knowledge of the law. He conducted his court with the utmost decorum and was himself always punctual. It was said of him that if he arrived two minutes before an appointment, he would walk away until the exact minute. His associate recollected him regularly arriving at his chambers — he rode to and from his home at New Farm — at 9.37, give or take three minutes. He described Griffith's court behaviour:

He listened courteously to the submission made, and for the most part refrained from argument either with counsel, or his brother Judges when sitting in the Full Court. He would, however, in a few short words dispose of a fallacious argument, and it was always good policy not to pursue a point after he had expressed the view that it was untenable.
He told an associate that:

The preparation of a judgement . . . should be a simple thing. It should resemble an isosceles triangle, in which you have a base consisting of vague, unassembled, undigested, and unmartielled facts and arguments. From that base you erect, as the sides of your triangle, the two sides of the case — rejecting or accepting facts and arguments on each side, and excluding irrelevant matters, until the sides of the case, and of the triangle, meet at a single point which you decide.  

Griffith's approach is exemplified in his judgment on a disputed contract case. The purchaser of a pastoral property sought to have the contract set aside on the ground of fraudulent misrepresentation, while the selling company counterclaimed as mortgagees for payment of a mortgage debt. Griffith heard the case with a jury on whose findings both parties claimed to be entitled to judgment.

The property had been mortgaged before sale, and payments were overdue. Indeed, as Griffith held, "the property was not a satisfactory security for the debt". It was stocked mainly with old sheep, and the only hope of making the property profitable lay in replacing them with young sheep. The loan company refused to make any further advances even for this purpose. Shortly before the sale, 7,500 young sheep were offered at three shillings and sixpence a head, to which droving expenses (over several hundred miles) would have to be added. The owner asked a middle-aged country storekeeper for help, but she wanted adequate security. The owner suggested she purchase the young sheep herself, so she applied to the mortgage company (with which she had previously dealt) for a loan. It was refused because she had no land, and the company suggested she buy the property outright. After some discussion as to its value and present stocking (she said she was told it had 4,800 sheep worth five shillings a head and 100 horses), she agreed and also purchased the 7,500 young sheep. The total price for the property, equalled the amount due on the mortgage.

When the stock was counted, it was found that there were only 3,689 sheep worth less than five shillings a head and 70 horses. The purchaser then gave notice of rescinding the contract for the purchase of the land, but retaining the benefit of the contract for the 7,500 young sheep.

Griffith held that the contract was indivisible and could not be offered in part and rescinded in part [the jury had answered a question that it was one bargain only]. He also held that the action would have failed even if the contract had been divisible, since the actual number of stock was not so much less than originally represented as to justify recession. He applied the rules of mutual mistake, which held that no relief could be given unless there were a considerable difference. He pointed out that the purchaser had received more in value than the amount she paid, and also maintained that there was no evidence to warrant a finding that the contract had been induced by the erroneous misrepresentation [this despite a contrary finding of the jury]. Griffith's judgment included a careful consideration of the dicta of English judges on the effect of representations in common law and equity. One of his statements well illustrates his caution:

The inducement by which a man is led to make a contract or to do any other deliberate act is the resultant of all the elements of probable advantage or dis-
advantage presented to his mind before he decides. The enquiry whether, if any
of these elements had been absent, he would have come to the same decision,
which is in reality the test sought to be applied, is an enquiry into what could
have happened if a state of things which did not exist had existed — an enquiry
in my judgement, incapable of answer, except as a matter of opinion, by the man
himself, and absolutely incapable of an answer by a stranger, except in extreme
cases, which would fall under a different rule.

He believed that rules existed for deciding the rights of the parties not at
the discretion, caprice or sympathetic feelings of a jury, but on an "intel-
ligible and definable basis".9

Griffith's judgments were often based on solid historical research. In
Helidon Spa Water Company v. Campbell, at issue was the company's trade
mark: was the word "Helidon" an essential part of it? Cooper had granted
an injunction preventing the use of the word, but on appeal to the Full
Court of Griffith, Real and Power, this decision was reversed. Griffith
argued that as "Helidon" was the name of a place, not an invented name,
the plaintiffs were not entitled to its exclusive use for the purpose of
describing mineral waters. In answering the question of what the words
"Helidon spa water" meant in Queensland, Griffith asserted that

the question is not what they mean in Victoria, in India, in China, or in England,
but what they mean in Queensland. The word Helidon to an Englishman buying
goods in Hongkong might well appear to be a fancy or invented name applying
to a particular kind of natural mineral water, or manufactured mineral water;
but we are dealing with a case in Queensland, and are bound to apply our local
knowledge and our knowledge of the history of the colony . . . the names of most
parts of the interior of Australia were first given to them by pastoral tenants, who
took up considerable tracts of country called stations, to which they affixed
names, and very often fancy names. Now, we who have been here — all of us
have been here since childhood — know that long before the separation from
New South Wales and the establishment of Queensland as a separate colony
there was a pastoral station called Helidon to the west of Ipswich, and between
there and Toowoomba. As early as the first Commission of the Peace for
Queensland, to which for curiosity I have referred, and which contains quite a
small number of names, I find the name of William Turner of Hellidon
(and he commented on the different "ll" spelling). A railway station had
been established there in 1866, and the station had continued as a pastoral
leasehold at least until 1874. Although "spa water" had originally referred
to a town [Spa] in Belgium, it had come to mean, long ago as the days of
Shakespeare, any place where there was a mineral spring. The words "spa
water" referred in Queensland to water from a natural mineral spring. Even
if the name "Helidon Spa Water" had been appropriated by long use,
Griffith held that there was nothing to prevent another person using the
word Helidon or saying that the spa water that he sold came from Helidon.

As it was possible that the plaintiff (the reputation of whose product was
important) might have a cause of action on some other ground than that
relied upon — the use of the name — Griffith granted a non-suit, without
prejudice to the plaintiff's right to bring a fresh action.10

One of the twenty-four cases he heard, Plant v. Rollston, illustrates
Griffith's thoroughness, particularly on the notion of a "royal mine". The
plaintiff sued the defendant under the Gold Fields Act for trespass. The
plaintiff had applied for a mining lease in the Charters Towers Goldfield which had been granted by the Crown in fee to other persons. Before the application was granted, the defendant (who was not the occupier) entered by means of a side drive from adjoining land and removed gold from a reef six hundred feet under the surface.

A special case was stated by the lower court for the opinion of the Full Court. Griffith's judgment (which was supported by Real and opposed by Harding) overruled a decision made by Harding in June 1893 involving the same plaintiff: Plant v. Attorney-General. Harding had ruled that a grant fee from the Crown conferred upon the grantee neither property in, nor possession of, a "royal mine" beneath the ground comprised in the grant, and that consequently no action was maintainable at his suit against a trespasser working the mine without licence or authority from the Crown. In Griffith's opinion, this freehold rule did not apply to "royal mines":

the truth of such a defence would in many cases be practically incapable of either proof or disproof until the lapse of a considerable time, as will be manifest to any one familiar, as we are, with the conditions under which gold is found in Australia. We know that it is found sometimes in reefs or veins, varying in thickness from a few inches to many feet, and which sometimes are apparent as outcrops on the surface for a short or a considerable distance, and sometimes are discovered ... at a great depth. These veins lie at all angles with the horizon, being sometimes nearly horizontal, but for the most part dropping into the earth in a plane more or less approaching the perpendicular. In other cases the gold is found in alluvial deposit, sometimes in surface soil, which is permeated with it for a depth of many feet, and sometimes again in an alluvial stratum underlying volcanic rocks at any depth from the surface. In other cases again — notably in the case of the celebrated Mount Morgan mine — the gold is found permeating the whole of the soil and rocks for a depth of hundreds of feet, and over an area of many acres. But in all these cases the existence of the gold in any particular portion of the ground is at first uncertain, and can only be ascertained by actual working. A reef may be barren for hundreds of feet, and then become gold-bearing. It may happen that the whole of a reef under one freehold is barren, and is consequently not a royal mine, while under the adjoining freehold it is gold-bearing, and is a royal mine.

He discussed other difficulties that could arise: a mine that was not a royal mine could, through a new mode of extracting gold, become a royal mine, and then, from a falling off in the quantity of gold in the ore, cease to be a royal mine. The common law attached great importance to certainty of possession in the case of land; this doctrine applied to mines would introduce "endless confusion".

After examining earlier decisions in England and Australia, including decisions by Molesworth ("who has been called the father of Australian mining law"). Griffith claimed that "the doctrine that the freeholder was not in possession of the royal mine seems never to have occurred to anyone", except to Harding in Plant's case, which he accordingly decided was wrongly decided.

Griffith believed this argument sufficient to decide the case, but in case of appeal he added an opinion: assuming the mine to have been reserved from the freehold grant, and consequently to have remained in the possession of the Crown, was it "crown land" within the meaning of the Gold Fields Act? His historical review of Australian mining acts revealed
that the term was one of qualification or description distinguishing land with respect to which the Crown had parted with all or some of its rights from land over which it retained full power of disposition. This applied to the surface, in clear contradistinction to mines of which an essential attribute was working below the surface.

Harding kept to his former opinion: the Gold Fields Act by internal evidence showed that royal mines were not within the definition of crown lands; outside evidence also showed they were not included. His position was that a crown grant passed to the grantee the land down to the royal mine and below it, giving no right to the royal mine at all.¹¹

Sometimes the cases Griffith heard were decided by events outside the court. In a nullity hearing, the wife claimed to have married under duress and fear (the threat of a loaded revolver), and that the marriage had never been consummated. Griffith explained in his judge's notebook why the case collapsed: a witness "called at my chambers and intimated to the Associate that he would give some information on the case. I therefore directed the case to be put on the paper". The evidence of this and other witnesses suggested that the two had been intimate long before the marriage, and although the wife swore that the witness was "a dangerous woman. She would hang an innocent man", and although her mother kept to the story of duress ("may I be struck blind deaf and dumb and my child be kept without a father if I know anything about this affair"), the action was dismissed.¹²

One divorce case had an unusual political twist going back to Griffith's second premiership. The husband, who was born in 1847 in Prussia, testified being "for nearly 4 years before that [1894] in the Police Department as a private detective, especially connected with the Labor Party. I attended their meetings". On his return from spying at one meeting, he saw men coming out of his home. He accused his wife of adultery, whereupon she "threatened me that if I did not let her have her free will she w'd tell the Labor Party what I was doing" — which she did. "I resigned from the Police in December 1894 because my work was found out. At a meeting at the Trades Hall I was told that my wife had told them I was a spy. I denied it but they rushed for me and I escaped. They threatened my life frequently afterwards. I reported the matter". He was granted his divorce.¹³

Griffith's belief in the separation of spheres of government was revealed clearly when W. Browne, member for Croydon in the Legislative Assembly, took civil action against A. Cowley, the Speaker, to recover damages for exclusion. Browne had been ejected under the standing orders of the House for seven days for disorderly conduct ("noise or disturbance while a member is orderly debating").

The trial was held before Griffith and a jury, which was not consulted before the judgment of non-suit. Griffith had ruled that evidence before the actual incident was not admissible: "the dignity of a colonial Parliament, acting within its limits, requires no less than that of the Imperial Parliament that any tribunal to whose examination its proceedings are sought to be submitted for review should hesitate before it undertakes the function of examining its administration of the law relating to its internal affairs", and he expanded this point in his judgment:
The House is not a court of justice, but the fact of its privileges to regulate its own internal concerns practically invests it with a judicial character where it has to apply to particular cases the provision of its Standing Orders relating to these concerns. I believe this is the first instance in which the ruling of a Speaker, which is subject to appeal to the House itself, has been sought to be submitted to the review of a court of justice. I am not disposed to be the first judge to review a Speaker’s decision on the construction of the Standing Orders. It would not be consistent with the dignity of this court to offer an opinion as to the manner in which an independent branch of the constitution, over which this court has no authority, should construe its own rules and orders.

As an ex-politician, however, he could not forbear “remarking” that he believed Browne had been fairly heard before being expelled.

Examples of Griffith’s logical approach can be shown in his decisions on voting disputes. After the March 1899 elections, an appeal from the Elections Tribunal reached the Full Court. In Cambooya, Daniels claimed to have been elected; on a true count of the valid votes he alleged he had received more than Mackintosh, who had been declared elected. The voting figures recorded were 627 for Mackintosh against 604 for Daniels. The tribunal had found in favour of Mackintosh, and Daniels’s appeal to the Full Court was rejected by all three judges (Griffith with Cooper and Power).

Griffith pointed out that appeal lay only from decisions made on questions of law. Hence he would not consider an objection that electors had not been allowed to vote at a certain returning office for refusing to make a required declaration, as no question of law was involved. Because of a lack of evidence, he also dismissed the question of whether the vote of one elector allegedly guilty of an illegal practice should have been declared void. Griffith found uncontentious the rejection by the tribunal of votes of those who had ceased to be residents before the election.

A central difficulty had been that although a third candidate, A. Davidson, had retired after the time prescribed, his name had remained on the ballot papers. The returning officer had told the electors, and told all the presiding officers to make it known, that Davidson had retired. Griffith ruled that this was not so improper an interference with the freedom of the election as to vitiate it.

Three classes of ballot papers had been objected to. In the first, Davidson’s name had been struck out in the ballot papers by the returning officer with the consent of the elector. Griffith was certain this did not make them void.

In the second, ballot papers were manuscript with only two names written on them, Davidson’s being omitted. Griffith found it was standard practice when printed ballot papers ran out for the presiding officer to write the names of the candidates on slips of paper. Griffith thought that the omission of Davidson’s name was an informality, or the omission of a legal form, and no possible harm could accrue to anybody from the omission. These votes should also be counted.

Finally there were 256 votes in which Davidson’s name and one other had not been crossed out: in 138, Mackintosh and Davidson; in 116, Daniels and Davidson. Should these votes be counted? The Elections Act stated that any ballot containing more names not struck out than were to be elected should be rejected. But another section stated that a ballot paper
was not to be rejected merely because of an informality if it were regular in other respects and if the intention of the voter were clearly apparent. Griffith, however, believed this did not cover these votes, and he ruled that, as it was not clear on the face of the paper for whom the elector intended to vote, they should have been rejected. In sum, the decision of the tribunal to confirm Mackintosh's election was accepted.\(^\text{15}\)

Griffith had anticipated difficulties with some of his colleagues on the bench and was to clash both with Real (a friend later sympathised with his hopes to be "free from Real, and . . . many petty annoyances which . . . worried you a good deal in Brisbane"\(^\text{16}\)) and more particularly with Harding who was "not at all pleased at my appointment . . . he occasionally is unwise enough to exhibit this feeling on the Bench — not when I am there however"\(^\text{17}\).

Harding and Griffith had clashed in the mining case of *Plant v. Rollston* and differed in a case under the Licensing Act, *Strachan v. Strachan*, in which an order forbidding the service of liquor was quashed because it had been made *ex parte*. Harding was emphatic that "one of the strongest principles of British law, and one of the highest privileges Englishmen enjoy under it, [is] that a man cannot be deprived of his liberty of person or reputation unless there has been a judicial inquiry, legal under the law". Although Griffith did "not for a moment doubt the general principles enunciated" by Harding, he questioned whether the Queensland legislature had "not expressly or impliedly given authority to move the order in the present case without hearing the party against whom it was made". He argued that the legislature must have been aware of the practice of making orders *ex parte*, especially as he believed that the act had been derived from a New South Wales one framed over thirty years earlier, before separation.\(^\text{18}\) His argument, insofar as it placed statute law over common law, could be seen as reflecting his political background, for it indicated a subservient role for the judiciary; only to interpret the written law.

Griffith was overruled by Harding and Real in another licensing case, the *Queen v. Morris and others*. On 5 March, local option had been adopted in Charters Towers; on 22 April it was rescinded; and an application for a licence (dated 14 March) was adjourned from 5 April to 3 May when a provisional licence was granted. The northern court of two had been split, whereupon the view of the senior judge (Cooper) had prevailed over the junior's (C. E. Chubb).

Griffith, in the minority, agreed with Chubb that the bench had no authority to grant a provisional licence on 5 April and could not give itself jurisdiction by any adjournment. He reached this conclusion after exhaustive discussion of the statute and of the rules of statutory interpretation, but his decision essentially rested on legislative intent:

> I have been unable to bring myself to doubt that the meaning of the Legislature as expressed in the words of the Act, is as I have interpreted it.

Any other decision would make the statute meaningless. This left no doubt of his strong disagreement with Harding and Real. Harding regretted that he could not agree with Griffith. In his view, the relevant section of the statute referred to "licences", but not to "provisional licences". Real followed Harding.\(^\text{19}\)
The clash between the judges came to a head in a series of insolvency cases. In the first, *re Stephensen*, Griffith was overruled in an appeal to his brother judges, Harding, Cooper and Real. Griffith had refused an application for a certificate of discharge, although a meeting of creditors (attended by three owing small amounts) had agreed that the insolvency had arisen from circumstances for which Stephensen could not justly be held responsible, and had consented to his applying for his discharge before passing his last examination. Griffith's grounds were that as fewer than three of the eighteen creditors for ten pounds and upwards were present, the resolutions were not a *bona fide* declaration of the deliberate opinion of the creditors as to the cause of insolvency. The appeal to the three judges was brief, as Harding had decided a similar question on 4 October in a different case (*re Caldicott*) and he simply reiterated this judgment. Cooper and Real concurred. Griffith did not forget this disagreement.

The clash was developed in June 1895 in *re MacKenzie*, insolvent, where Harding and Real were in a majority against Griffith. A woman applied for a certificate of discharge confirming a resolution at a meeting of her creditors. The question was whether the resolution was a special one, within the meaning of the Insolvency Act, which provided that the resolution had to be carried by a "majority" in "number" and three-quarters in "value" of the creditors present and voting on the resolution. Creditors for less than ten pounds were not to be counted in reckoning such a "majority" or "number". In this case, four creditors were present, all voted for the resolution, but none of their debts exceeded ten pounds. It was suggested in court that the practice of the court had been to grant a certificate when the resolution had been unanimous, even if the creditors were for less than ten pounds. Griffith had the records since 1874 carefully searched to see how often this had occurred, and found five precedents (Lilley in 1890; Real in 1893; Harding in 1893 — twice — and 1894). He believed that in the first three of these the attention of the judge had not been directed to the point at issue, and in the last two Griffith had dissented. Griffith therefore refused to interpolate "unless unanimous" in the section: "to hold that a condition precedent which became impossible may be disregarded is of course contrary to the most elementary rules of construction ... It appears to me, therefore, that the point is now open for decision upon the merits, free from any consideration of the effect that should be given to a supposed current of decisions of single Judges on unopposed applications".

Harding disagreed strongly with Griffith. He believed that the resolution was quite legitimate in the terms of the statute: indeed it could be disadvantageous if it were not accepted: "for example ... if all an insolvent's creditors present were unanimous, and under £10, he could not have the benefit ... whereas if all, or any, of his creditors were over £10, he could — a manifest incongruity". He used the precedents listed by Griffith to stress that "up to the present, the decisions of this court have been uniform and consistent, and in accordance with the views I have enunciated".

Real agreed with Harding and, perhaps more hurtfully, criticised Griffith's logic:

It seems absurd to say you cannot have a majority of nothing ... You may say you cannot have a majority of nothing; so also you could say: True, but you can
have the whole thing of nothing, and nothing is the whole of nothing. That, to
my mind, would not be interpreting.

Overall he believed that the intention of the legislature could be met by
holding that the section only came into operation when there was not
unanimity. 21

The impasse was not resolved before Harding's death on 30 August
1895. Griffith had seen him the day before his death, which he recorded
in his diary, "Harding J. died at 3 a.m." and "saw Harding J. dead". Rough
notes made by Griffith for a speech possibly at the funeral on 1 September,
are revealing of both men. Griffith acknowledged his close association with
Harding for over twenty-eight years, "considerably more than half my
lifetime", throughout which he had seen him "always as a friend". He
claimed that no one had better opportunities for judging Harding, and he
began with mention of his "essential kindliness of heart". He admitted
there had been legal "passages of arms" between them, but these were
"always forgotten as soon as over". Harding had had great knowledge of
law, especially of equity. Judges of the Supreme Court had a difficult task,
for they were "supposed to know something of everything". He, like Hard­
ing, was interested in the rules of practice, which were not intended as "a
trap for the unwary but aid for the wise not the foolish". Harding had been
"a just and upright judge, without fear, favour or affection acted by the
simple drive to administer the law as he found it" ("not to alter it" was
Griffith's original phrase). Harding's "industry" had been "indefatigable"
and his "sense of duty strong and regardless of self". Griffith then wrote
"eccentricities" and added "we expect too much. We are not angels.
Sufficient if conspicuously better than average". He ended with, "what
better can be said of a man however distinguished his ability than that he
faithfully and unselfishly used that ability for the benefit of his fellow
man?". Harding was replaced by Cooper, who transferred from the north­
er circuit where his post was taken by C. E. Chubb. 22

The clashes between Griffith and Harding had been open. A more covert
example of the judges' prejudices affecting their decisions was in a land
case in which Griffith upheld a decision by the Land Board to reverse a
land commissioner's decision to grant a grazing farm to the winner of a
ballot. The underlying issue was "dummying" — was the appellant an
agent, servant or trustee for some other person? The person suspected by
the Land Board was the appellant's father. For some years he had occupied
three family selections of 20,000 acres each on the Ward River, held
nominally by himself and two of his daughters, but always worked as one
property. The selections had been sold by one contract for £9000, which
the father was supposed to be investing. He had three daughters and three
sons, of whom the appellant, aged twenty, was the second. At the end of
1896 this son, by arrangement with his father, went overland from
Charleville to Hughenden, where they went together to see the land being
balloted. The father took with him seven applications signed in blank by
his three daughters, his two other sons, his father (aged over seventy), and
a friend. The second son lodged an application for one farm, paying the
deposit with his father's cheque, and his father lodged four other appli­
cations. The second son was successful in the ballot.

Griffith attached no weight to the payment of the deposit by the father.
He believed that it was a matter of indifference to the family which of their applications was successful. Griffith believed that any farm obtained was to be treated as a "family selection", as the previous holdings on the Ward River had been, and that this was enough to indicate that the son was an agent for his father.

His decision was overturned by Cooper, Real and V. Power who, in a joint judgment, ruled that the onus of proving that an applicant was an agent for another lay on the person impeaching the application. In this case the son had stated on oath that he was not such an agent, and neither the commissioner, the Land Board nor the Supreme Court could, in the absence of evidence negating this statement, refuse his application on the sole ground of their disbelief in his statement.23

The conflicting decisions may have sprung from the judges' prejudices: Griffith's leanings towards genuine selectors and against squatters; Cooper's beliefs as the son of a wealthy squatter; and Power's ideas as the son of a solicitor who ran sheep and cattle. The theory hardly fits Real, the son of a poor tenant farmer.24 As hard cases make hard law, perhaps the majority was right in giving the benefit of the doubt to the applicant.

The relationship between the judges was usually close, despite their differences, as demonstrated in one of Queensland's most famous trials heard before Griffith in the Supreme Court, in November 1902. This was the charge against the Kenniff brothers, Patrick and James, of murdering two men. The incident, reminiscent of the Kelly story in Victoria over a decade earlier, began with a warrant being issued in 1902 to arrest both brothers on a charge of horse-stealing. They, like the Kellys, were country Irishmen, and along with their father and younger brother, Thomas, had bad reputations with the police. Both had been in prison; in 1895 for stealing race-horses, and earlier for cattle-stealing at Grafton, their place of origin. The Kenniffs had held land and stock since 1893, but in 1899 had been dispossessed on the basis of a police report imputing that they were stealing cattle from neighbouring stations.

The 1902 warrant was issued to Constable George Doyle, one of the alleged victims, who had been stationed on the Upper Warrego to control horse-stealing. On Good Friday (28 March) Doyle, an Aboriginal tracker called Sam Johnson, and the other alleged victim, Albert Dahlke, manager of "Carnarvon" station set out to search for the Kenniffs in Lethbridge's Pocket. The brothers and eighteen-year-old Thomas had called that same day at "Carnarvon" head station and made threats against Dahlke and Doyle. Dahlke had earlier beaten James in a fist-fight, and his horse had outrun the Kenniffs' horses.

On Easter Sunday the police party intercepted the Kenniff brothers, and after a chase Doyle arrested James. Johnson was ordered by Doyle to go back two hundred yards to the packhorse to get handcuffs. When he left, Dahlke was holding James's horse by the bridle, and Doyle was holding James, having succeeded in unhorsing him by grabbing his foot. What happened next will always be conjectural. Johnson heard five sounds like revolver shots [the intervals between them was one of the many disputed facts], was delayed by trying unsuccessfully to get the handcuffs out of the pack-bags, then began to ride back, leading the packhorse. On the way he saw James and Patrick riding towards him, whereupon he released the packhorse and rode into the scrub.
Johnson returned to the pocket that afternoon with an employee of "Carnarvon" head station, and found Dahlke's horse bespattered with blood and the police packhorse with its bags removed, but no "men or bodies, or any other horses". Later were found the remains of four fires [with human blood, bones and teeth nearby], the spurs of Dahlke and Doyle, two bullet marks in a tree and log, and — most grisly of all — Doyle's horse with the police pack-bags thrown over its saddle, and containing "about two hundred pounds weight of charcoal, which ... was found to contain a large quantity of fragments of human bones ... partly burnt, human teeth, shirt buttons, and shirt stud, and small fragment of clothing material". Rugs and pins worn by Doyle and Dahlke were also discovered in these bags. Medical examination established the remains to be of an adult male, or males, who had recently died.

James and Patrick were chased by the police but, again paralleling stages of the Kelly epic, were at liberty in the bush for about three months. They stole horses and food from towns [once narrowly escaping the police in Mitchell, one hundred miles south of the Carnarvons] and stations [at one leaving a note "remember Dahlke"]). A reward of £1000 was placed on their heads, and warrants were taken out against sympathisers suspected of sheltering them or supplying them with food. Eventually, in a dramatic raid on their camp near Mitchell on 23 June, Patrick was arrested. James later gave himself up: "I'll surrender if Patrick is not killed or wounded, I must see him first".

Appearing before a magistrate in Mitchell, the brothers were committed to trial at Rockhampton, but the venue was then changed to Brisbane. Local sympathy for the Kenniffs was strong, as shown by their long period of freedom, and by the cheers of the crowd in Mitchell where they were charged.

Griffith, the chief justice, prepared to hear the case in Brisbane. The crown prosecutor hoped to avoid popular pressure by requesting a "special" jury of twelve called from a selected group of occupations. Edwyn Lilley and Charles Stumm appeared for the Crown, with W. J. McGrath for the defence.

Little is revealed of Griffith's personal reactions to the excitement; his diary merely records his presence in the criminal court on the seven days [3 to 11 November] of the trial. Indeed he gave more detail to a personal incident a week later in St John's Cathedral, the christening of his grandson, recording his names "Thomas Samuel Griffith".

Griffith ruled that the defendants had to be tried for each murder separately. The Crown decided to proceed with the murder of Doyle, first having to prove that Doyle was dead. Apart from the medical evidence, the observations of the Aboriginal tracker were critical. Griffith recorded in his notebook: "I am satisfied that an oath would not be binding on his conscience and direct that his evidence be taken on a promise to speak the truth and which he makes". McGrath, understandably but undeniably displaying racial prejudice, endeavoured to belittle this witness [reminiscent of the open attacks on Messiah in the Hopeful case], but unavailingly. For instance he once used pidgin, a ploy that rebounded decisively against him, as the record shows: "McGrath: 'What time of day was it when the bullets were flying about — sun go up, go down or him on other side?' Witness
Griffith assured the jury they must treat Johnson’s testimony as they would that of any other person, while some of his exchanges with McGrath suggest that he was prepared to give special protection to this witness against hostile imputations.

A second vital issue was the case against James Kenniff, who was last seen in the custody of both Dahlke and Doyle. The Crown case was that Patrick had arrived at the scene, whereupon Dahlke had released James’s horse and had ridden to meet Patrick, and had been shot. Patrick had then shot at Doyle (the bullet marks in the tree and log were interpreted to show that he had missed), after which Doyle had been fired at and killed by either one, or both, of the prisoners. Their joint guilt was based on a section of Griffith’s Criminal Code that declared that when two or more had a “common intention” to do an unlawful act, and an offence had been committed which was a probable consequence of that purpose, “each of them is deemed to have committed the offence”.

In his summing up to the jury (which lasted for one and three-quarter hours), Griffith, speaking in his usual “clear, cold tones of measured directness”, gave his opinion that there was ample evidence to find either or both guilty. He stated that there was no indication that James had a revolver. He also said that if there were any doubt about the guilt of either prisoner, both must be given the benefit of this doubt, for it would be dreadful to convict on mere conjecture.

Before the jury returned, McGrath asked Griffith to reserve for the consideration of the Full Court two points of law: there was no evidence to go to the jury on the death of Doyle, or on the guilt of Patrick or James jointly or severally. At McGrath’s request, Griffith recalled the jury to direct them as to the effect of alleged threats made against Dahlke on 28 March. Including this brief recall, the jury were out for less than an hour before returning a verdict of guilty against both prisoners.

Patrick and James now spoke, protesting their innocence. James, as had Ned Kelly, criticised the chief justice: “I wish to comment on your summing-up ... I think you never gave us one item of justice”. Griffith answered this charge before pronouncing sentence: “I think it is my duty to say that I entirely agree with the verdict of the jury; and I fail to see how they could give any other verdict ... I told the jury that I believed there was ample evidence to justify your conviction”. He may have had doubts, however, for the Brisbane Courier journalist reported that he pronounced the grim words of the death sentences “in a broken voice”.

The sentences were respited until the Supreme Court heard the points reserved by Griffith at McGrath’s request. Meanwhile the police rejected an anonymous confession, possibly from a relative of the Kenniffs, and public discussion continued unabated after the verdict. The Full Court heard the case three weeks later, on 2 and 3 December. Griffith, Cooper, Chubb and Real delivered their judgments on the 10th. The hearing was remarkable for open disagreements between the judges on various issues, including the impartiality of the jury. Eventually, however, both points were resolved against McGrath, only Real dissenting on the verdict against James.

Prior to hearing the case, Real had deliberately not read the evidence taken before Griffith, whereas his colleagues had. Real may be criticised
for not realising the implications of some of the earlier evidence (for instance on the amount of vegetation in the pocket, which made Johnson's story more credible). This led to a direct clash with Griffith. Real said, "although the blackfellow was blind, other people were not. They could see two hundred yards. I would consider myself a party to the murder of James Kenniff if I went on evidence such as that". Griffith responded: "I object to my brother saying a thing like that. He says if he concurred in the opinion I expressed he would be concurring in a murder. It is a most extraordinary thing to say of a brother Justice". Real explained he was referring to Lilley's arguments, but repeated that he could see no evidence, except surmise, against James.

On the jury question, Griffith again clashed with Real, who claimed that "you have to look for evidence . . . no doubt . . . the jury had made up their minds that the prisoners were guilty". Griffith contradicted Real: "I have very good reason to believe that a number of the jury had made up their minds to acquit the prisoners". Real warmly defended his allegations:

they may have made up their minds to give the prisoners the benefit of the doubt, and to give them a fair trial, but they may also have made up their minds that if these men were killed in the Pocket, the chances were nine to one that they were killed by some of the Kenniffs, and all they wanted was legal evidence to enable them to convict.

Griffith reiterated that he had interrupted "because I did not think that an attack should be made on the jury such as has been made by my brother Real". Although Real claimed he had not attacked the jury, all the other judges commented on this jury issue. Cooper, who had remained silent during the exchange with Griffith, was later particularly severe on Real's allegations:

if I could believe that in a case involving the death penalty they could be so inhuman and so false to their oaths as to decide beforehand to send prisoners to the gallows if they could possibly find a legal excuse for such a course, I should be ashamed to be the servant of a community which expected me to administer justice through such a polluted channel . . . I am satisfied that the accusation against them is unfounded.

Chubb briefly stated his concurrence with Cooper's opinion. Real answered Cooper directly:

In justice to the jury, I hope that any person reading the remarks of my brother Cooper will, before coming to the conclusion that my remarks reflected on the conduct of the jury in the manner suggested, read what I said. What I said was not so intended . . . I would never hesitate to perform my duty, but I consider that if I were to make reflections on the conduct of persons engaged as jurors, except upon a matter of public notoriety, it would be improper. This, however, was an extraordinary and unusual case, and that is shown by the fact that it was tried by a public jury, and not by the ordinary criminal tribunal of the country.

Griffith had the last word:

As the judge who presided at the trial, I think it right to say that in my opinion there is no foundation whatever for any suggestion of bias or prejudice on the part of the jury, and I have heard with much satisfaction the concluding words of my brother Real on that subject.
Real did not forgive Cooper for his remarks. When, six months later, the latter succeeded Griffith as chief justice, Real publicly said Cooper had obtained seniority due to a mere "slip of the draftsman".

Real had disagreed throughout with his fellow judges on the verdict on James: "there was no evidence whereon the jury could find James Kenniff had anything to do with that shooting. I am not here to decide on his guilt or innocence, but on the evidence. A man cannot be convicted on conjecture". Griffith did not agree: he pointed out that the only function of the Full Court was to enquire "whether there is evidence upon which reasonable men, properly instructed as to the law, could find the facts to be such as they are actually found by the verdict", and was sure that this verdict was so justified.

It is clear that from this evidence, with other evidence in the case, a strong inference, commonly called a presumption, would arise, in the absence of evidence to rebut such an inference, that both prisoners were concerned in the murder, either as the actual perpetrators of the crime in concert, or as aiding the actual perpetrator or perpetrators, and it was for the jury to say whether they would draw that inference or not.

He distinguished the facts from another case (R. v. White and Richardson) on which Real had relied. In that case, the prisoners jointly engaged in burglary had separated and run away in opposite directions before one of them made a murderous attack. In this case, although the prisoners "at first ran [and he said 'ran' not 'may have run'] in opposite directions, they met again before the commission of the crime, and were both present at it, and, moreover, immediately after it endeavoured to suppress the police officer who was a witness to their presence".

Despite Griffith's certainty, support for the Kenniffs remained strong, petitions against their death sentences coming from several centres in Queensland including Brisbane, Toowoomba, Charters Towers, Townsville and Rockhampton — and a concert was held in Brisbane to raise funds for an appeal. The Executive Council met on 31 December and decided to commute James's sentence to life imprisonment. Griffith's finding that no evidence had been given as to James possessing a revolver was noted here. Although as presiding judge he repeated to the council his finding that both verdicts were compatible with all the evidence, he added: "It is, I think, probable that the prisoner James Kenniff did not take an active part in the course of the crime". James had, however, been "present, and aided in the commission of the crime . . . [so] was guilty of wilful murder".

The same council meeting decided that Patrick would be hanged on 12 January, and despite attempts at further appeals the sentence was carried out on that day. Patrick's last reported words implied criticism of Griffith's justice. "I have told you twice before that I am an innocent man. I am as innocent as the judge who sentenced me".

Griffith was also the judge in one of the oddest (and temporarily most successful) examples of defrauding. A man called Campbell claimed for personal injury caused by the negligence of the railways' commissioner after he fell out of the open door of a train. The fall was reported by a fellow passenger, Henderson, who subsequently disappeared after Camp-
bell was found with an apparently dislocated spine. Evidence was adduced
that the two men, using aliases, had made money from the railway authori-
ties by using the same trick in New South Wales and possibly in West-
ern Australia, South Australia and Victoria. Griffith, after giving judgment
for the commissioner, committed Campbell for perjury.

In the trial for conspiring to defraud heard in November 1902, details of
the previous successful "falls" emerged: at Mt. Victoria railway station in
1900; at Ararat in 1896 (they had failed in this action); at Adelaide in 1899
(Campbell had been awarded between £300 and £400 after asking for
£1,000 for falling to a platform and paralysing the lower part of his body).
The South Australian secretary of the railways commission gave evidence
of having seen one of the men a few days after this verdict "walking
actively in King William Street. He had walked into court, but very slowly.
His case was that he was permanently injured in the lower part of the
spine". Henderson had left Brisbane in a hurry when he realised "there
was trouble" and had been arrested in Melbourne on a warrant for £1,750
for false pretences from the New South Wales railways' commissioner. In
this hearing, Queensland made sure of their immediate punishment; both
received seven years' imprisonment with hard labour.27

Griffith dealt with the estates of important property holders, including
the Duracks and James Tyson. "Lissadell" station in Western Australia was
one of the properties taken up by the Duracks after overlanding from
Queensland. Michael Durack, who died in Brisbane in 1894, believed that
"Lissadell" was a wonderful property, and that it would support his
descendants. His widow, Kate, was soon disabused when the amount of the
debts (over £30,000) was revealed, with "Lissadell" mortgaged to Hill, who
was an executor of the estate. Hill, wanting to protect his own interests,
consulted his solicitor, who advised him to resign the administration of the
estate. After a hearing, Harding allowed a transfer to the Union Trustee
Company. A month later, this company, after consulting the other executor
and the Durack family, instructed a firm of stock and station agents to sell
by auction the equity of redemption of the mortgaged property. Hill took
no part in the instructions or arrangements of the sale. At the sale, duly
advertised, Hill was the only bidder; he paid one pound for the equity of
redemption.

Griffith presided in Durack v. Hill, an action to set aside the sale as a
breach of trust, alleging that it had been a sale by Hill as an executor to
himself. The only meaning of this allegation "consistent with the rules of
pleading and the rules of fair play" was, said Griffith, that Hill had not fully
divested himself of the office of executor and that the defendant company
merely acted as his agents in the transaction. Griffith could find no such
evidence: it was not a sale by Hill to himself; indeed Hill had said that if
anyone else would give thirty shillings for the equity of redemption he
would be welcome to it.

Griffith believed the evidence of the worthlessness of "Lissadell",
although the output of the station in the following years was far to exceed
the Duracks' reckoning. It was sold in 1927 for £72,000.28

The death of an even greater landowner, James Tyson, led to several
cases. Tyson died on 4 December 1898 in Queensland, allegedly his domi-
cile. Shortly after his death, the New South Wales Supreme Court con-
considered whether the enormous estate [including 5,329,214 acres of land] could be distributed in that state. The decision was that Queensland Trustees [Limited] should administer the estate in Queensland under a named committee; no proceedings inconsistent with the settlement were to be taken in any colony by any of the parties; if any question arose as to the meaning of the settlement, this should be determined by two named barristers. Queensland Trustees, who were not parties to this action or the settlement, applied to the Supreme Court of Queensland and obtained letters of administration of Tyson's estate.

The first Queensland action, heard by Griffith, was by one of the next of kin [Emily Catherine Mulholland] against another of the kin [John Tyson Doneley] and the Queensland Trustees claiming administration of the Queensland estate, and the determination of the next of kin. Griffith was quite sure that there was no bar to this hearing in Queensland: "I confess frankly I am utterly unable to apprehend what sort of estoppel is set up, or how an agreement between the plaintiff and other persons is to estop the plaintiff from maintaining an action against these defendants on a course of action which cannot be disputed". Cooper and Real concurred.

In a second hearing, Griffith declined to make an order as to service on persons not already parties, but adjourned the summons generally to admit the application to be received after the determination of the inquiry as to the next of kin.

The third hearing was to determine succession duty. Letters of administration had been granted to the Queensland Trustees, which had paid transmission fees and valuation fees, but no property beyond the colony of Queensland had been included. The commissioner for stamps claimed that succession duty was payable on the whole of the personal estate in all the colonies, alleging that Tyson, although born in New South Wales had resided in Queensland, and was domiciled in Queensland. The personal property included a mortgage debt of £57,000 over land and stock in New South Wales, the deed never having been in Queensland.

Griffith gave the initial judgment. He followed an earlier case [Hardings] in which the Privy Council had agreed with the Queensland Supreme Court that the doctrine *mobilia sequuntur personam* ("moveables follow the individual") did not apply when determining the payment of succession duty of deceased persons. The test was domicile: if Tyson's was in Queensland, "the rule of construction compels us to hold that the Legislature, in imposing succession duty, required the person entitled to succeed to his estate to pay that duty to the Treasury in Queensland". The only two fetters on Queensland law were that it could only run within the colony's boundaries ("but as international law treats the personal property of persons who die domiciled in Queensland as being in Queensland" this was mainly immaterial), and that the colony "may not make a law which is directly contrary to a law of the United Kingdom extending to Queensland". Griffith realised, more than most, the changes that federation could bring:

There are other kinds of legislature whose legislative authority is governed by entirely different principles. Such will be the case here in a short time if an Act which has been lately much talked about [he was speaking on 11 May 1900] becomes law, and then very interesting questions will arise of an entirely new
nature in Australia, but which give rise to a great part of the litigation in the United States of America. But we have not yet arrived at that.

Griffith distinguished succession from probate duty, which was payable on *bona notabilia* "where the goods are situated . . . wholly irrespective of the . . . domicile of the testator". Succession duty had to be paid before a grant of administration. Duty was payable on the net amount received by the successor, who was entitled to deduct necessary expenses, which included probate duty and costs of administering the estate in other colonies. Griffith, following the Privy Council's ruling in *Hardings* case, held that the interest on two mortgages, one under the Real Property Acts of New South Wales, and the other on cattle located and registered in that colony, were assets of the colony of his domicile.31

The vital question — whether Tyson was actually domiciled in Queensland — was not decided. Griffith held that a further action should be brought by the attorney-general to decide the necessary facts and to declare rights of the Crown.

The domicil issue was settled seven months later in Griffith's judgment, which was delivered on 14 December 1900, after a hearing of twenty days. He had examined sixty witnesses, received depositions from fifty more, and adduced an "immense quantity of documentary evidence". The depositions, Griffith's notebooks (five volumes of which are devoted to this case), and his twenty-four page judgment provide a detailed picture of a legendary Australian figure and of the whole squatting age.

Griffith accepted Lord Wensleydale's definition of domicil as a guide: "Habitation in a place with the intention of remaining there for ever, unless some circumstance should occur to alter his intention". Griffith's task was

to determine whether Tyson, having his domicil of origin in New South Wales, voluntarily made his home or fixed his habitation in Queensland with the intention of continuing to reside there indefinitely unless some change of circumstance should give rise to a change in purpose or . . . without any intention or returning to New South Wales and making his home or fixing his habitation in that colony . . . and secondly whether if he did so make his home in Queensland he afterwards abandoned it, so that his domicil or origin was restored".

Tyson had been born in "the Cowpastures" on 8 April 1819, where his mother lived till her death in 1874. James in 1846 occupied land on the Lachlan River (later called "Toorong"). In the fifties he travelled with stock to the Victorian goldfields where, by selling meat, he "laid the foundation of his fortune". In 1856-57 he bought "Deniliquin" station (near "Toorong") where he lived for about two years, before selling it in 1860-61. He than paid £80,000 for "Juanbung", adjoining "Toorong", and merged the two. By later expansion this became "Tupra" holding, of over 780,000 acres, which he owned until his death. In 1865 he had bought "Heyfield" near Sale in Victoria for £60,000 for fattening stock for the Melbourne market. Griffith doubted whether he ever "lived" there, especially as in 1866 he began building a brick house at "Juanbung", where he "lived" fairly continuously until 1870. In February 1868 he first acquired pastoral property in Queensland, buying "Tinnenburra" on the lower Warrego. The year before, he had advanced a sum of £37,000 on a mortgage on "Felton", near
Toowoomba on the Darling Downs. He visited it occasionally in 1868, "taking steps for the protection of his security by the acquisition of the freehold of land which might otherwise have come into the hands of selectors when the new Land Act passed in that year". Griffith had no doubt that he remained a resident of New South Wales until 1870.

In November 1870, however, Tyson came to "Felton", apparently with the intention of taking possession under his mortgage. After the mortgagee left (early in 1871) Tyson "lived" most of the time at "Felton". This was partly involuntary because of a legal action (in the New South Wales Supreme Court) by the Bank of New South Wales claiming to be the real mortgagees. Not until May 1877 did he become sole owner. "I do not think", judged Griffith, "that the circumstances of his residence at Felton up to this time can be regarded as indicating an intention to make that place his permanent home".

But then his situation changed:

from 1871 to the time of his death Felton was his business headquarters ... There he kept his clothes, his diaries, and his letters, and there he had a library of which he appears to have been rather proud ... at Felton no woman was allowed to live, except his own housekeeper or domestic servant. The quality of his occupation of Felton differed in this respect, as well as in duration, from that of his occupation of the other two places at which it has been suggested that he had his real home.

Tyson continued to acquire more properties throughout Australia. In 1887 he built a new house at "Felton", "a model station residence. It was completely fitted up as a bachelor's residence, and he appears to have been very fond of it". In 1893 he accepted a nomination to a seat in the Queensland Legislative Council, having previously refused a seat in the New South Wales House.

Griffith believed this evidence was almost enough by itself to prove that Tyson had acquired a Queensland domicil, and there was even more: he was described as "Tyson of 'Felton'" (or "of 'Cambooya'" or "of Queensland")' his own written declarations stated that he resided in Queensland; there were frequent references to "Felton" in his diaries, correspondence and conversations. One exception was when, as executor of his brother (who died worth half a million pounds), he described himself as "a grazier of Juanbung, New South Wales". Another was a letter to Parkes in which he described Sydney as "our beautiful city". Griffith explained this easily enough: it had been written in 1888 just after the hundredth anniversary, and

Tyson appears from many of his letters to have been a strong supporter of the project of Australian federation, and there is to my mind nothing surprising in the fact that, writing to Sir Henry Parkes, who was an old friend, he should have applied to the mother city of Australia the well-deserved epithet of "our beautiful city".

Griffith surveyed the other negative evidence, such as Tyson's expressed desire to be buried in a vault at Campbelltown in New South Wales, and his comment once that he felt more comfortable at "Heyfield" than at any of his other stations. But overall, Griffith held that Tyson before 1880 abandoned his domicil of origin and made his permanent home in Queensland.
“Felton” had become his permanent residence by his free choice, and he had never abandoned his new domicile so chosen.

The decision meant that Queensland could recover succession duty at the rate of 10 per cent on the value of Tyson's moveable property in New South Wales and Victoria, worth respectively £388,919.16.3 and £351,974.15.10.32

Griffith's political knowledge was to prove useful in some cases in his court. In Young v. Smyth, for example, he had to interpret his own 1884 Pacific Island Labourers Act to decide the limits of "field work" in connection with the cultivation of sugarcane. An islander had been employed in carrying cane from the field where it had been grown along a highway to a railway station a mile off. The question was whether such work was allowed under the act. The 1884 act had been intended, as Griffith explained, to restrict the employment of Kanakas to field work in "tropical or semi-tropical agriculture". "Field work" specifically excluded certain mill tasks and "horse-drawing or carting"; "all points which had arisen . . . and the work [excluded] as work in which islanders had actually been employed. Probably the term "field work" would itself have been enough to exclude many of them, although it would not have excluded them all". Griffith, with the concurrence of Harding and Real, upheld the Bundaberg magistrates' decision: that the work was "field work" within the meaning of the act.33

Another case, Hornbrook v. Hyne, concerned regulations under the Pacific Island Labourers Act of 1880-84. A Pacific Islander who had completed his three-year contract entered into a contract for a further twelve months at a fixed wage. Soon after, a new regulation was promulgated that exempted employers from liability for wages when workers were ill. This islander became ill, and the employer applied for exemption. The islander died, and the inspector proceeded against the employer for wages due. Griffith ruled that the regulation passed after the contract was entered into could not alter its terms, so the employer was liable for the whole of the man's wages. He also commented on the regulation that provided that every time-expired islander had either to be returned to his home within a month, or be contracted under a new agreement:

I am quite unaware of any authority of the Government under this statute, or any other, to make such a regulation, and I venture to say that I doubt whether the legislature itself has power to make such a law. To say the least, great doubt exists as to the validity of such a regulation.

Cooper and Real concurred in the judgment, without any comments on Griffith's interpolated stricture.34

Griffith used his knowledge of chemistry, dating back to his University of Sydney studies, in a case on the validity of a patent for improvements in obtaining gold by the cyanide process (using cyanogen in extracting gold from its ores). The commercial importance of the invention was shown by Griffith's reference to the vast quantities of "tailings" (discarded or waste products of crushing mills, known to contain considerable quantities of gold): "it was proved to me that by means of the plaintiff's process many millions of tons of those tailings have been profitably treated, and millions of pounds worth of gold obtained from them".35
In another mining case, a tall story about gold managed to persuade a jury, but failed to convince Griffith. A company sued an ex-employee, an electrician who had access to all their mines, for conversion of a bar of gold. The employee had told the company's manager months before the action that he had obtained gold dust from an old man on the understanding that if he were not requested by advertisement in a certain newspaper within a stated time to return the gold, he was to keep it. No advertisement had appeared, and he had the gold hidden. He told a similar story to a young woman, but with significant differences. Later this employee had sold smelted gold dust to a bank for £451. He could not explain why crushed quartz found at his home was similar to that in the employer’s mine. Griffith and a jury found for the defendant, but Griffith refused to grant him costs. Griffith explained that costs followed the event, unless the judge "for good cause" otherwise orders. "I think", stated Griffith "that the conduct of the defendant, as disclosed by the evidence, not the contradicted evidence, but the evidence of manifest facts, was such as to lead the plaintiffs reasonably to believe that they had a good cause of action".  

In 1896 the Supreme Court of Queensland was asked to enforce a judgment obtained in New South Wales against a man living in Queensland. Griffith refused, explaining that

Writs in New South Wales run as far as the border of New South Wales ... Beyond that they are mere pieces of paper — mere notices. In the case of the colonies which have joined the Federal Council it is different. Their writs in cases where the cause of action arose in the colony in which the action is brought, remain throughout federated Australia. New South Wales had not thought fit to join in that federation, and writs as I have said, stop at the border. 

In another case heard in 1897, where one party carried on business in Western Australia, and the other in Brisbane, London and Melbourne, Griffith held that action could be brought in Queensland under the 1886 Australasian Civil Process Act, a measure that he had helped introduce when a member of the Federal Council.

One of the first cases attempting to apply a federal law was heard by Griffith in chambers on 25 March 1902. The Service and Execution of Process Act had been assented to in the federal parliament in October 1901. The case followed a judicial separation granted in New South Wales to a wife in 1897 with provision for the payment of permanent alimony. Payments were in arrears to over £300 when the husband left New South Wales and came to Queensland. A writ of attachment was issued against him in the Supreme Court of New South Wales on 30 July, 1901, and the Supreme Court of Queensland was then approached to execute this writ in Queensland. Griffith recognised that this was "a novel proceeding"; an application to extradite a man for non-payment of debt. He refused to exercise his discretion until the husband had an opportunity of being heard. When the man did not appear, Griffith referred the application to the Full Court. Eventually he refused the application on the grounds that the act was not retrospective and made no provision for the enforcement in one state of any process of execution issued in another state. Extradition was on terms of reciprocity, and as the "laws of Queensland do not allow attachment for debt ... it would be an anomalous thing if a person living
in Queensland, and protected by the laws of Queensland from imprisonment for debt, were to be handed over for imprisonment in New South Wales".39

Griffith’s constant concern to maintain high standards in his legal profession was shown in several of the cases he heard on admission and debarment. In 1894, he considered the admission as a barrister of a solicitor, Charles Powers, who in 1913 was to become one of his colleagues on the federal bench. Powers had been a solicitor for more than three years, as required by the rules, and the board of examiners certified that he had passed examinations in Latin and French. The act required passes in Latin and Greek, so the question was whether French could be substituted for Greek. Griffith pointed out that the board had made French an alternative to Greek in 1891: "The legal effect seems to be either that the Board have dispensed with an examination in Greek altogether or have dispensed with it conditionally on the candidate passing in French". Griffith and Harding had no difficulty in ruling that Powers could be admitted, although Real was less certain.40

The relationship between an articled clerk and his master solicitor was discussed by Griffith in an application from A. H. Jones, who had entered service with his brother, whose firm had offices at Rockhampton and Brisbane. The clerk served at both offices, sometimes under his brother, whose illnesses (which eventually caused his death) had necessitated absences from work. Griffith began with the basic rule that "service of an articled clerk must be under the immediate supervision of his master. In this case the articled clerk has not so served continuously". He allowed some of the service in Brisbane while a partner of the firm had been in charge, but ruled that a further period adequately supervised was necessary to make up the requisite five years.41

Griffith was later to criticise his own argument in Jones’s case:

I am afraid... I must have been guilty of using the minor premise for the major, because in that case the service was right. The master was absent through ill-health, but the service continued under the supervision of the master’s partner. The principle would be the master was absent for a temporary purpose, though the occasion unquestionably was ill-health.42

Griffith found no excuse for a solicitor who had been given money for a specified purpose, had not so applied it, and had refused to refund it. The solicitor failed to reply when asked to explain to the Law Association. The Supreme Court called on him to answer, and six weeks later he submitted an affidavit. Griffith did not believe his story; under the new Criminal Code it was a case of stealing.43

The distinction between the two branches of the legal profession, barristers and solicitors, had always concerned Griffith, convinced as he was of the superiority of the former. When an articled clerk applied to serve under a barrister practising as a solicitor, and the registrar refused to register the articles, the issue was referred to Griffith in chambers. He referred it to the Full Court, where he gave the only written judgment, and upheld the registrar’s decision. Cooper and Power concurred. Griffith reviewed the history of the rules in his judgment. The 1879 requirement of five years’ articles under a practising solicitor had clarified the distinction in
Queensland between solicitors and barristers. Subsequently the Legal Practitioners Act of 1881 permitted any person practising as a barrister also to practise as a solicitor. The case hinged on the meaning of these words: did they mean that every barrister who chose to practise as a solicitor became a practising solicitor? Griffith thought not.**

T. J. Ryan, Queensland's future Labor premier, appeared twice before Griffith as a legal student. On the first occasion, his application for exemption from attendance at sittings of the Full Court in Brisbane was refused. Ryan, who had arts and law degrees from Melbourne University, was classics master at Maryborough Grammar School, 180 miles to the north of Brisbane. Griffith explained the object of the regulations:

It is designed to secure that every barrister shall have something more than mere book knowledge — some acquaintance with the manner in which Court proceedings are conducted. That being the object of the rule, the attendance should be considered, I think, as an essential part of the course of training. . . .

It is a disadvantage to a man who does not live in Brisbane that he cannot do things which can only be done here. But the same disadvantages exist in any matter where particular conditions are required to be observed. For instance, if a man cannot live in Queensland he cannot enjoy the advantages of a citizen of Queensland. There are disadvantages that are incidental to all conditions of life.**

Ryan's second application to Griffith was equally unsuccessful. He applied for exemption from the final examination for admission to the bar on the grounds that he had qualified to be a barrister in Victoria. Griffith regarded the granting of an exemption as being "in effect, to give to Victorian barristers the right to admission in this colony without examination, a right which this Court had systematically refused to grant, unless upon terms of reciprocity".**

Besides sitting in Brisbane, Griffith travelled with the Supreme Court on circuit. This duty took him to several of Queensland's provincial towns, and kept him in limited contact with their social conditions, often so different from those in the southern capital. Much of Queensland was still a frontier, where Griffith's infrequent appearances to apply English law impartially must have seemed to many residents far removed from the reality of their lives. His detailed notes on his cases do not, unfortunately, include his reaction to the evidence. His judgments were rarely transcribed as few of these cases were reported. He sat with the court on circuit at nearby Ipswich; in the west at Toowoomba and Roma; on the central coast at Rockhampton, Maryborough and Bundaberg; and in the north at Townsville, Cooktown and Normanton.

Griffith's visits to the north were infrequent. He went to Normanton only twice (in September 1895 and April 1903). On the first occasion, he heard a murder case (resulting in an acquittal); on the second, one of the two horse-stealing cases took the jury over six hours to decide on the accused's guilt. In this small community, the second case had to be adjourned because one of the witnesses, a carter, was one of the jurors still considering their verdict in the other case. Griffith eventually sentenced both accused to two years' imprisonment with hard labour, as well as ordering them to return the horses. A third case, of wounding with intent to do grievous bodily harm, followed a fight allegedly caused by a man placing his hand on an Aboriginal woman lying on a bed under a mosquito
A Peaceful Decade 241

Although Townsville was the site of the separate northern court, Griffith sat there in criminal jurisdiction twice, in June 1894 and October 1895. On the second trip he had been further north to Normanton and Cooktown for two murder cases one of which ended in a death sentence, and the other, against four Aboriginals, in a verdict of not guilty. In the first he ruled that the jury must disregard evidence ending with the words, "I make this statement in the knowledge that I am in danger of my life". On the same visit he sat for three days in civil jurisdiction hearing a dispute over payment for a ketch.

Griffith made a second visit to Cooktown in April 1899 to hear five cases. An Aboriginal charged with rape was found guilty of attempted rape, and sentenced to seven years' penal servitude. A lighter charge was also sustained for an Aboriginal charged with murder. Evidence was given of drinking before a fight in which the deceased had struck the first blow, and Griffith imposed a sentence of three years' penal servitude for manslaughter. The third case, again against an Aboriginal, charged him with wounding with intent to murder and do grievous bodily harm. He was found guilty of the lesser offence, and sentenced to two years with hard labour. In the fourth case, an Aboriginal charged with murder was found not guilty.

The fifth case was the exception to this apparent leniency, for in it an Aboriginal charged with murder was found guilty and sentenced to death. The evidence indicated some of the manifold difficulties in applying English law to these cases. The police sergeant from Musgrave answered a question from Griffith: "I did not understand from the word 'fight' that they were fighting together. They use the word 'fight' when a blow is struck at all without fighting in the English sense". The manager of two stations, one 130 miles north-west from Cooktown, described the accused (called Muckie) "a wild blackfellow . . . not employed on station . . . came from beyond the Coen". In Griffith's report to the Executive Council, he was unable to recommend mercy: "in my opinion the charge was proved as clearly as it is practicable to prove a case which depends almost entirely upon the evidence of aboriginal witnesses possessing a merely rudimentary knowledge of English, and where little or no aid is obtained from interpreters".

Griffith's visits to the centre of Queensland were more frequent. In Rockhampton in April 1894, he heard one civil case, a breach of promise action in which, after the jury had assessed four questions on the facts and had assessed the damages at £100, Griffith found for the plaintiff for this amount. There were several criminal cases, including forging and uttering; shooting at with intent to murder; murder (resulting in a verdict of manslaughter and a sentence of fifteen years); and buggery with a male (in which, after evidence was given by two boys aged sixteen and twelve, the accused was found not guilty).

A case that must have provided some light relief was that of an Englishman charged with using seditious words. This "independent social-
ist", as he called himself, had allegedly distributed circulars telling of the coming revolution and said that: "half the workers of England are starving and at the same time paying half a million a year to the sauerkrauted old brute of a Queen. If I had my way I'd blow her skyhigh with something". He claimed that his actual words had been: "If I had my way I would not blow her skyhigh with something for I am no anarchist but I w*d insist or demand that one half of her present salary sh*d be distributed to the poor and needy". Of McLlwraith he was alleged to have said, "he only wanted a head on one side and a tail on the other to make a bullock of him" and if he "had a longer tail and two horns he could be sent to his own boiling down establishment and boiled down". The jury found him guilty with a recommendation for mercy — and Griffith sentenced him to nine months' imprisonment in Brisbane gaol. Perhaps Griffith inwardly chuckled over the descriptions of McLlwraith, whom another friend (MacGregor) had likened to a dugong.*

Griffith returned in 1897 to Rockhampton, where he heard one civil case and several criminal actions. The civil case was one of defamation, in which a pastoralist proceeded against the editor of the Peak Downs Telegram. The editor in his defence admitted that he had written the words complained of in an article, but argued that they were fair comment on a matter of public interest — the 1891 strike, a serious matter in the Clermont district, whose residents feared another strike. He alleged that the pastoralist had said to his shearers: "I am going to cancel your agreements and postpone the shearing", to which one had countered: "the men could not be blamed for creating labour troubles when they had to put up with action like that". The jury found for the pastoralist, and damages of fifty pounds were awarded.

The criminal cases Griffith heard in Rockhampton in 1897 and 1899 included prosecution of a man for unlawfully knowing a girl under twelve years old. The jury took two hours to find him guilty, after which Griffith sentenced him to two years' imprisonment with hard labour. Another jury took longer to deliberate in a bizarre charge — attempt to commit buggery with a brown goat. Despite evidence of direct observation by a ganger's wife, and corroborative medical evidence, it took the jury three and a half hours to reach a verdict of guilty, whereupon Griffith sentenced the man to eighteen months' gaol.

An Aboriginal charged with murdering an Aboriginal woman was found guilty of manslaughter and sentenced to a year's imprisonment. Griffith's notebook records his admission: "another black boy came and take my gin away. I hit ... [her] long and back with stick. Then my gin bin run away. I bin pick up tomahawk and ... throw im ... my gin along a head".

Another fight between Aboriginals over women led to a sentence of three years' penal servitude after the accused admitted "I bin kill him with that knife". Both cases were heard in 1899 and considering Griffith's earlier political experiences he presumably still believed Aboriginals should, as citizens of Queensland, be answerable to British concepts of justice.

The cases heard at Maryborough (civil in 1894 and 1901, and criminal in 1894 and 1902) were as varied as in other towns: they included a mining dispute in 1894, and in 1901 a charge against the commissioner of railways for contributing to the death of a fourteen-year-old boy killed when a
grocer’s cart he was driving skidded on a rail. The finding was the the roadway had been kept reasonably safe for traffic and the boy had not exercised reasonable care.

The criminal cases included another murder charge against an Aborigi­

nal, who was sentenced to ten years’ penal servitude for manslaughter. His statement would have revealed to Griffith the tragedies of a mixed society:

I no kill her. I hit her three fellow time along nulla nulla and make 3 fellow mark along a head belonga her. She live to follow day - then she die. I plenty cross alonga her. I get some fellow drink she go donga one fellow black boy one fellow half caste plenty fellow white man. That why I been beating her.

A man living at Abington near Childers was found not guilty of buggery, despite explicit accusations by two boys aged eleven and thirteen. Another man of Imbil was acquitted of rape after he claimed the woman had agreed to sleep with him, and other evidence was given that the accuser, a married woman, had previously brought a rape charge against a Chinaman, was “a casual prostitute” and was “half-witted”. A case of stealing a fishing boat may have been a relief to Griffith after such unsavoury revelations of the violence of frontier Queensland.

The Bundaberg civil cases, heard in 1893 and 1894, were likewise reveal­
ing of social conditions. In a dispute over damage of property, evidence was given that the “plaintiff said to a Kanaka who was passing ‘come and kill this whitefellow’. The consequences of racism in sugar areas in Queensland were shown in a murder trial, where the deaths had appar­
tently followed a fight on “Bingera” plantation whose 240 Kanakas included recruits from Malayta and Auba. The jury found the first three accused guilty of manslaughter, the fourth not guilty, and in each case their verdict was accompanied by a “strong recommendation to mercy on the grounds of all the circumstances”. Their legal representative also asked Griffith to apply the probation act he had introduced when premier. But as judge, he refused, without giving reasons, and sentenced each of the three to twelve months’ imprisonment with hard labour. Other criminal sittings included sexual cases — indecent assault of two boys aged six and eight (Griffith sentenced the man to five years’ penal servitude) and a Chinaman charged with keeping a disorderly house. In one of the property cases, an embezzler’s sentence was suspended under the Offenders Pro­
bation Act.

The cases in the west at Roma and Toowoomba further illustrated Queensland’s frontier conditions. At Roma, Griffith heard several criminal cases: in 1895 an Aboriginal tried for the murder of another Aboriginal (he received three years’ penal servitude); in 1896 a buggery charge against two consenting males (both found not guilty); and a manslaughter charge against a half-caste (found guilty with a recommendation to mercy, and sentenced to four months’ with hard labour); in 1897 a wounding charge with intent to do grievous bodily harm (following a strong recommendation to mercy, he was gaol­ed for only one month); in 1898 a murder charge against an Aboriginal, the victim at Augathella being a girl aged eight (he was sentenced to death); and finally a charge of indecent assault at Cunnamulla on a girl under twelve years old (he received ten years’ gaol).

At Toowoomba only five civil cases, all involving land, were heard
between 1893 and 1901. One was a long-drawn out boundary dispute. The first trial ended when the jury were unable to agree after six hours; the second trial, which opened with Griffith fining the sheriff's bailiff ten pounds for contempt of court for not having potential jurors present at 11 a.m., ended when the jury, unable to agree after seven hours, finally agreed after being locked-up all night (although they still could not answer one question because of "not sufficient evidence", and left five others unanswered). Griffith's resultant judgment was that the plaintiff had to remove a dividing fence, and the defendant had to pay half the plaintiff's costs of action. Other cases were for specific performance of a contract, alleged fraud in selling land, and rectification of a lease.

Griffith heard far more criminal cases at Toowoomba between 1893 and 1902. Their range was wide: bigamy, larceny, stealing (a gelding, a horse, and cattle); wilful damage to property (including damaging telephone insulators by stone-throwing; 200 insulators had to replaced around Toowoomba in a year); false pretences; forging and uttering; and several cases of wounding with intent to murder (and/or do grievous bodily harm). One of the last followed a pub quarrel, and when one of the accused came up for sentence, having been found guilty with a strong recommendation to mercy on grounds of provocation, he told Griffith he had "a great knocking about". A doctor testifying to his rheumatic pains, affected heart, congested liver, and injured stomach muscle, concluded: "he is wasting away and his constitution breaking up". Despite this evidence, and character references from the local members of parliament (A. Morgan and Groom) averring that he came from "one of the most respectable families in the district", Griffith refused his barrister's plea for the application of the Offenders Probation Act, and sentenced him to twelve months' imprisonment.

In another case, after the jury had found a man guilty of wounding with intent to do grievous bodily harm, Griffith listened to medical evidence on the man's sanity and to an extenuating statement from the local constable:

[the] prisoner lives a solitary life on his selection. I knew him about 12 months. He lives principally on corn and pumpkins and milk. I doubt whether he is right in the head. He has told me he has known horses to change colour down about Emma Creek — bay horses to turn white; also that he has heard guns outside his hut at night — people outside trying to do him an injury. I was told that young fellows down there play tricks on him and make him get out of temper. I don't think he is older than 40. From all I know of him he is a very harmless inoffensive man.

The doctor, recalled by Griffith, agreed: "I think the isolation and his diet might cause hallucinations and affect prisoner's brain temporarily, but he has shown no signs of insanity while he has been under my observation". Griffith put this unfortunate into gaol for three years, but his note indicates some sympathy: "I promise to recommend some remission of sentence if in gaol Pr. shows that he deserves it".

The one murder trial was of a half-caste Aboriginal for killing a female Aboriginal with an iron bar. He was found guilty of manslaughter, the jury believing evidence that he was drunk. Griffith's sentence was three years' penal servitude.54

The Ipswich criminal hearings repeated the pattern in the few cases
Griffith heard in his visits in 1893, 1896 and 1897. Griffith had lived in this town forty years earlier. It was close to Brisbane, but it still retained pioneer elements. The cases covered larceny from the person and wounding with intent to do grievous bodily harm (guilty); indecent assault on a girl under twelve (in which her Sunday School training, coincidentally in Griffith's father's church, influenced her in refusing intercourse because they would be seen by "somebody above us" — the accused was found not guilty); attempt to commit suicide (by drinking a tumbler of oxalic acid — used to take the grease out of leather — found not guilty); receiving (not guilty); and rape and aiding a rape. The victim in this final case was a thirteen-year-old girl, and the occasion had been at a farmhouse on Christmas Eve — eventually the lesser offences of unlawfully knowing and indecently assaulting a girl under fourteen with her consent were found, the jury adding the rider that the accused believed on reasonable grounds that she was over fourteen. Both were sentenced to six months' gaol, Griffith reserving for the Full Court the point whether the conviction was right in the face of this rider.

Griffith's transition from politics to the bench in 1893 had not isolated him from Queensland's kaleidoscope; the cases he had heard both on circuit and in Brisbane had revealed to him most facets of its political, social and economic existence.

As chief justice he represented the pinnacle of objective law, and supposedly was removed from the highly subjective disputes he adjudicated. He believed that the application of justice was necessary in every society; indeed his legal experience made him sceptical of the possibility of an ideal society in which disputes would be eliminated. His Christian upbringing had introduced him to the concepts of sin and evil, and he had never eliminated the influence of such ideas. Law was needed to control society, and it was no accident that he spent so much time on the Crimes Act, listing the evils men do and would inevitably do.

Griffith's personal life had centred in Brisbane on his wife, children and home. He had spent far more time in Queensland than he had in the previous decade, with trips on circuit to the country less frequent than his earlier political visits. He did not visit Sydney for two years after being appointed, and then his stay was brief — only five days in March 1895 when his son Percy began his inglorious studies at Sydney University. The next journey outside the colony was in November 1896 to visit MacGregor in New Guinea and Llewellyn at Port Douglas. In January 1897 he had a holiday in northern New South Wales, around the Richmond and Clarence Rivers. The following January he travelled further, taking Julia through Sydney and Melbourne for a holiday in Tasmania. He was in Sydney for the inauguration of the commonwealth in January 1901, a time of celebration and of intrigue for the future legislature and judicature, and visited Sydney briefly in September and October 1902 during the legal recess. At the end of that year, he took Julia to Western Australia.

"Merthyr", Griffith's riverside home, remained the centre of his social life, and regular functions were held there, such as a garden party on 29 September 1893 and a reception on 19 October 1899. He had time for experimentation, both physical and mental. He had watched bicycle sports in October 1893, and in May 1896 at the age of fifty he began "lessons on
bicycle". After three weeks he ventured on the road, and was soon riding all over Brisbane with Julia. He bought his own machine on 22 July. In that same month he "practised golf" with Llewellyn.

Griffith had long been interested in Italian culture, and by the 1890s he was concentrating on Dante Alighieri. He recorded finishing reading the *Inferno* on July 14, 1898, and three months later had translated the first part of the story of Ugolino. He sent copies of his translations of two stories (Francesca and Ugolino) to friends, one of whom wondered at his gruesome taste, and asked why his "clear bright intellect" was becoming morbid.

Griffith may have hoped for financial gain from his publications, since the continuing mortgage on "Merthyr" remained a heavy drain, despite the increased salary for the chief justice. On 31 October 1894 he recorded buying land at Wellington Point for £1,000, and paying off an overdraft but having to take out a new overdraft for £3,161 at 5 per cent. He still had some Mount Morgan shares, transferring 1,200 to Julia on 9 September 1895.

Whatever his financial insecurity, he had social prestige as chief justice and acting governor. As a leading Mason he enjoyed the paraphernalia of ceremony and the consciousness of difference and superiority. He was proud of being consecrated as a Provincial Grand Master in July 1896. As head of the trustees of the Brisbane grammar schools he had tried to influence education and encourage moves to begin a university in Brisbane. He faced a crisis at Brisbane Girls' Grammar in 1899-1900 when the headmistress (Miss Fewings) and another teacher (Miss Sellers) were dismissed. Griffith was closely involved in the appointment of the replacement headmistress (Miss Wilkinson) and in the public meetings held to explain the trustees' decisions. At the prize-giving on 14 December 1900, he pleaded for a "subordination of particular points or fads to the interests of the school". Brisbane Boys' Grammar faced no such crisis, and the conscientious chairman of the trustees watched its attendance recover from a low of 202 in the depression to reach 250 in 1904, the year he resigned.

Partly for prestige, Griffith had devoted considerable time during 1898 to a campaign to ensure that the chief justice, rather than the president of the Legislative Council, held a dormant commission to act as lieutenant-governor of Queensland. While acting as deputy for Governor Lamington, he assumed the administration by a proclamation on 23 May.

He welcomed Lamington's decision that he should have precedence at a social function as chief justice over Nelson, the president of the Legislative Council. Griffith was sufficiently impressed to note the decision in his diary. His campaign, which had involved the governor's wife, seemed to be successful by September 1898 when the governor advised that the chief justice was to hold the dormant commission to act as deputy governor.

Victory, however, seemed to turn into defeat in October. Lamington had again appointed Griffith his deputy from 26 October until the end of November, but the day before Lamington left, he regretfully informed Griffith that his ministers considered this appointment "undesirable in the public interest" because Griffith would be presiding at a trial of the Queensland National Bank's directors. Griffith was extremely annoyed,
Order of Procedure

AT THE

INSTALLATION

OF THE HONORABLE

SIR SAMUEL WALKER GRIEFFITH,

K.C.M.G., G.G.,

AS THE

Right Worshipful Provincial Grand Master

OF QUEENSLAND,

HOLDING UNDER THE MOST WORSHIPFUL GRAND LODGE

OF Ancient, Free, and Accepted Masons of Ireland.

EXHIBITION HALL, BRISBANE

THURSDAY, 26TH OCT., 1893.

The Masonic Order of Procedure.
(Reproduced from The Keystone 2, no. 8, November 1893.)
adjourning the court the next day, "in consequence of public affront from Govt", as he wrote in his diary. He made his bitter disappointment very clear to the new premier, Dickson, who took considerable pains to explain both publicly and privately that the decision had in no way been meant as a personal affront.67

Griffith, who was sufficiently mollified to sit on the bench on the 27th and following days, confided to Garrick that he blamed Lamington for the incident.68 Eventually Griffith was to get his way on the deputy governorship question: he acted in June 1899; from 15 September 1899 to 24 April 1900 and from 5 October to 12 November 1900 (both in Lamington's
A Peaceful Decade

absence); and again from 20 June 1901 to 27 March 1902 (in the interregnum between Lamington's departure and General Chermside's arrival).

As acting-governor, Griffith supported the rights of governors of the states vis-a-vis those of the governor-general. He tried to influence the governor-general, Hopetoun, to make the states-rights view clear to Barton, the prime minister, not realising how close the two men were. Hopetoun confided to Barton his doubts: on the sugar industry whether Griffith was "the best of good friends to the Commonwealth", and on defence thought Griffith entirely lost "sight of the fact that State governors are no longer commanders in chief ... in defence matters the Commonwealth is supreme".69

Griffith had also maintained his concern in external affairs, particularly with New Guinea. In November 1893, a bitter dispute developed between Norman and MacGregor about the latter's term of office. MacGregor wished to resign his administration, but Governor Norman, after consulting premier Nelson, could find no Imperial despatch limiting MacGregor's term, and suggested he should take leave and then return to continue his work. MacGregor was furious, believing that Norman was seeking revenge for his and Griffith's ignoring the governor's proper place: "your intervention", MacGregor told Griffith, "put official matters on a footing the Governor did not like; now I am being paid out for that".70

Griffith was placed in a dilemma. As chief justice he had to avoid overt interference in political affairs, although he had probably been consulted on the issue by Norman and Nelson; yet he held MacGregor in high regard and would doubtless have believed the administrator's departure could adversely affect the new colony. Ultimately he apparently wrote to MacGregor urging compromise, which caused MacGregor, although still angry, to change his views: "guided largely by your advice", he told Griffith, "I have proposed to continue here" on certain conditions. MacGregor's correspondence with Griffith was mild in comparison with his letters to Norman and to Gordon, and he surprised everybody by his change of mind. His terms were accepted and he returned for a second spell. Later MacGregor regretted his decision, telling Griffith (forgetting apparently that he had acted on his advice) that it had been a "fatal mistake", the "turning point in my official career ... count[ing] ... against my future promotion".71

MacGregor left British New Guinea in 1898, but he hoped that Griffith would support his successor, G. R. Le Hunte: "I am so sensible of the value of your moral support and steady sympathy in the British New Guinea work that I ask you to extend these to Le Hunte from the beginning. The friendship will follow".72 Le Hunte did indeed become a close friend, and they corresponded throughout his governorship (1899-1903), and beyond. Griffith entertained Le Hunte at "Merthyr" on his first visit to Brisbane in 1899, and he became a regular visitor whenever in Brisbane.

Le Hunte was impressed by Griffith's hospitality, and often referred to both his home and family: "I hope ... you found your pretty grounds and garden in their usual good order when you came back to Merthyr ... Please give my kindest remembrances to Lady Griffith and the young ladies" and, much later, "have you still got your beautiful "Merthyr" of happy memories?".73
As acting-governor Griffith could, and did, officially advise on New Guinea. His review of affairs for the Colonial Office always contained analyses of its problems, especially during the protracted delay over its takeover by the new federal government. Griffith even argued that it would be preferable if Great Britain assumed full responsibility.

Griffith found "considerable difficulty and embarrassment" after federation as to his exact official relationship to New Guinea, in every case asking the governor-general whether the federal government agreed to his sanctioning ordinances. Griffith tried to speed the takeover by writing official and private letters to politicians and governors, perhaps not realising that he was irritating them. Hopetoun apologised to Barton on 16 August for bothering him with a telegram on New Guinea, "but Sir S. Griffith seemed in such a state of mind about the question that I thought it would ease his feelings if I agreed to communicate at once with you". By October, Hopetoun told Barton "that blessed New Guinea question . . . Sir Sam Griffith is in a state bordering upon madness over it". Griffith’s suggestion that Britain take over the colony had embarrassed the governor-general.74

Griffith was also in continuous correspondence with Deakin, to whom on 4 December 1901 he sent a twenty-eight page survey of British New Guinea’s "constitutional . . . position since 1887", apologising for its length: "I fear I have wearied you but I take great interest in the question".75

Griffith was consulted by the commonwealth government and by individuals about possible appointments to New Guinea. He was very cautious with individuals, for instance writing: "I do not feel justified in making any recommendations to the Federal Govt directly or indirectly except in response to a request". He passed on to Barton details of those who had asked him to recommend them, and gave frank comments on their qualifications.76

Neither Griffith’s interference, nor Le Hunte’s desperation succeeded in speeding matters, and it was not until after Le Hunte left Queensland, in 1905, that the Papua Act was passed by the commonwealth government.

Between 1891 and 1902, Griffith and Julia were rarely apart. The one extant letter between them is a brief note Griffith wrote on 10 October 1898 to Julia, who was away with the children in Sydney for three weeks. Apparently Julia was making the visit for her health, as Griffith was glad to know she was better and assured her she should stay in the south: "Again I say — do not hurry — but I shall be very glad to see you". As in his diary, he was noncommittal about his judicial work ("I have just finished work in Court (1 o’c)"), and only slightly less so about his other activities. He had cycled to a new house in Ithaca, gone on to Rutledge’s, been visited by his brother-in-law Oxley (who was starting a new building society) and by MacGregor (with whom he was about to have lunch), and was to dine with his son-in-law (Tom). Clearly he was lonely without Julia: "I could not go to sleep for a long time. I heard the clock strike 1 three times running and then strike 2 and 1 again before I went to sleep".77 He had been shocked by the sudden death of his protege Byrnes (Griffith visited him on 16 September, recording "ill with measles", but was away from Brisbane when Byrnes died on 27 September).
The emotional strain, combined with Griffith's ill-health (influenza had forced him to bed for several days in July and August and his diary records his tiredness), culminated in a serious illness from 9 November. This was a recurrence of his piles, which had troubled him for years. On 14 November three doctors "advised return of piles and examination under chloroform", and he was operated on the next morning. His diary records the discomfort of the operation and recuperation, but he was able to dress for lunch by the twentieth, and three days later returned to his chambers.

Griffith was sufficiently recovered by November 28 to host a dinner party to celebrate the fourth anniversary of Eveline's wedding and to resume his normal court duties. He had a second operation on 10 December: "under chloroform about 45 mins. In great pain all of day aggravated by retention of urine until that relieved itself". At the end of a week, the pain had eased enough for him to walk to his study and smoke a cigar. The next day "went to closet in yard for first time"; on the twentieth he was able to hear a chamber application in his study; by Christmas Eve he was "feeling quite recovered except in morning for a short time. Walked in paddock".78

Griffith had other complaints — hay fever, influenza and new dentures — but it was the health of Llewellyn, Griffith's elder son, that caused him most concern. Llewellyn had returned unwell from his second trip to England in July 1900, and was to be bedridden from August 1901. Then what had seemed to be "mild attack of Enteric" was diagnosed as meningitis. Llewellyn was not expected to survive the night of 6 September 1901. In the next two months, Griffith's diary entries ranged from hope to despair. Another crisis came on 13 October and his condition worsened, with his temperature usually well over 101°. Griffith, perhaps disturbed by his son's illness, was thrown from his horse on 20 November, and spent a day in bed "severely shaken" and another day "recovering from shock". On 28 November, Llewellyn was delirious. Griffith was called home from a meeting of the trustees of Brisbane Grammar School the next night, and his son died on 6 December: "F.C. [Full Court] and Ch. [Chambers] all morning. To G.H. [Government House] aft. and ev. Llew died at 6.50 pm (sudden heart failure)."79

It had been a tragic year for the Griffith family. Samuel's sister Prissie had died on 9 September 1900, and his three-month old granddaughter (Eveline's second daughter) had died on 17 July 1901. Soon after Llewellyn's death, Julia went to Tasmania with three of their children, Percy, Edith and Gwen. Griffith's regular letters until her return in March reveal much about him. On 13 January he recorded visits from Ev and Tom and child Jemima. He complained of the heat (88° in Sandgate and 108° in Brisbane), telling Julia, "you are well out of it. I have had so much anxiety and disappointment lately that I feel quite stunned and stupid, but no doubt the rest will do me good after a little". He repeated this theme in his next letter:

I feel very lonely without you and have not seen many people ... There is no doubt that I want a long change and holiday. I am run down, and as I said before, am dull and stupid and disinclined to take any interest in anything to do anything. Otherwise I am very well.
He was trying to continue his activities, planning to go on the Gayundah to Lytton to see the new military contingent.

By 21 January, he had been to Lytton, "but I feel very lonely". However, he tried to put Julia's interests above his own: "I am glad for your sake that you are not here but not for mine . . . you must stay in Hobart for a month at least and get thoroughly set up. I will get along somehow".

By the twenty-fifth he wrote at greater length of mutual friends and correspondence, and for the first time mentioned Llewellyn: "Dr. Thomson came down to see me on Thursday evening. We talked about Llew. a little, but he did not say much of interest. He had seen all the preparations of the staphylococcus from his blood". Griffith longed for a complete break: "I shall be sorry, in one way, when I have to begin regular work again; for I am having a good rest and am, I think, a good deal the better for it. But it is a poor substitute for the long holiday which I want". Their home was seen through miserable eyes: "I went out to Merthyr yesterday morning. I think I never saw it looking so brown".

His note four days later does not hint of his finding any consolation from religion, merely recording "Eveline and Nellie and I went to church on
Sunday". He travelled to Warwick to open its show, and by 2 February was more cheerful. He had taken Tom to Warwick, and his grandson "enjoyed the trip so much" that Griffith had planned another train trip to the border with Tom, Eveline and Nellie, staying the night at Wallangarra and returning by the mail train. As well he had planned a bay trip on the Lucinda "so next week will not lay heavily on my hands". He was at home at "Merthyr" ("as brown as ever"), and had been working all the previous day at Government House (in his capacity as lieutenant-governor).

In a later letter, Griffith wrote to Julia: "I hope that in another month you will feel so much better that you will not be afraid to come home, but it is a good thing for you to be away just now". The border trip on a very hot day was briefly reported in his next letter of 4 February.

Julia, who must have known well her husband's self-centredness, had commented on his concern for himself. He tried to reassure her: "you must not be uneasy about my health. Much as I miss you, I am very glad that you are not here", the effect of which was somewhat spoilt by a postscript: "there are a lot of bills for you but they will keep".

He was becoming more cheerful. The next letter spoke of a Thursday trip to the bay in the Lucinda as "a beautiful day". He also planned to go to the 'Gabba to watch a cricket match, barristers against solicitors. He had done some work, sitting in chambers and at Government House. He concluded sadly, "I am ending the vacation tired instead of refreshed, but otherwise I feel very well".

On Monday, Griffith had presided at a council meeting on the prevention of consumption, and now realised that his vacation was over: "I am well enough, except that I still feel very tired and disinclined to work. However I shall have to begin bench work in the Full Court to-morrow".

By the twelfth, he had begun work again in earnest. After a hard day in court, he wrote to Julia that he felt rather tired 'but my head has been very clear all day". He was trying to get through arrears of papers at night, and had resented being interrupted one evening by Oxley. But now he was anticipating Julia's return, which became the main subject of his letters. He hoped this would be while he was acting governor so she would have the comfort of a vice-regal carriage. He was concerned for her welfare:

I am very glad indeed to hear of your being able to walk to town ... the more I think of it, the less advantage I see in your staying in Sydney ... the change would not do you nearly so much good as Hobart. Besides the plague [typhoid] seems pretty bad in Sydney. I think you had better stay as long as you can — not because I do not want you, for I miss you very much, but because I want you to come home quite well and strong.

By the end of February, Griffith's Brisbane routine was re-established. He was committed in April to circuits, a week in Roma and another in Toowoomba [although optimistically he hoped there would be no business]: and "after that I have a long case which they say will last 4 or 5 weeks".

Another Lucinda weekend helped to make a letter of 3 March cheerful despite his learning of the deaths of a parliamentary colleague, W. H. Wilson, and another friend: "I am feeling better the last few days, and people say I am looking well. It is not quite as hot".
Typhoid had reached Brisbane, and he suggested that Julia should stay away: "you need not think that I wanted you to come home sooner. I am getting very weary of being alone, but I was very anxious that you should stay as long as possible and come back as well as possible. But by 8 March he was writing: "I do not suppose you will want to stay in Sydney for more than a week amongst the plague [typhoid]. I received this morning your letter of Monday, I am glad that your face is better. I shall be much disappointed if you do not arrive back quite well . . . I shall be very glad to see you again". Two days later, he wrote her the last of the twenty-two letters he sent to her in the two months she was away.

Percy left for Sydney on the twenty-fifth to escort Julia home, and they, with Edie and Gwen, arrived in Brisbane on the twenty-seventh, Griffith meeting them at Roma Street station at noon. On the following day, the two parents went to Llewellyn's grave.

During the enforced separation, Griffith had re-established a routine, both in his work and social life. The death of his son, even if long expected, had been a severe emotional blow from which he recovered when he returned to his duties as chief justice and governor. He had tried unusual remedies, such as the train trips to the border, but most relief came from his escapes to the solaces of Moreton Bay. Perhaps the separation helped strengthen the marriage, and their visit to the grave together could be interpreted as showing their acceptance of an altered future. But within eighteen months, their rapidly re-established Brisbane routine was irretrievably ended, when the family had to adjust to a new life in Sydney.
Federation had been proclaimed on 1 January 1901, but this had not immediately led to the establishment of federal courts. Indeed, many in the first commonwealth parliament believed that the policing of the new constitution would best be left to the state courts, with the right of appeal lying to the Privy Council to ensure eventual uniformity. Griffith, as chief justice of the Queensland Supreme Court, had heard a few cases involving federal law. He, as did some federal ministers, including Barton, desired a central Australian court, and had discussed his own prospects for the chief justiceship with friends. On 25 August 1903, the Judiciary Act was passed, establishing a High Court with a chief justice and two other justices.

In 1900, Griffith had considered re-entering politics as a step to the chief justiceship. While Barton and Deakin were discussing possible federal ministers, Deakin wrote to Griffith on 7 October 1900 asking his intentions. Griffith replied he had not thought of re-entering politics until it was suggested by Philp two months previously, and his financial position made it impossible unless his pension were accelerated. His property returned no more than £70 a year, and he paid £1,300 in interest and rates. His present inclination was that

if it were generally desired that I should take a hand in launching the ship I should find it hard to resist the appeal, but that I should not be disposed to volunteer or obtrude my services if they were not wanted.

He thought Barton may not have forgiven him for his intervention in 1900 when the bill was before the British parliament. He ended his letter ‘‘very much perplexed, and . . . unable to come to any decision’’.1

Deakin’s response (to those parts of the letter he could read) was to ask Griffith how much of its contents could he tell Barton [as the likely prime minister] and O’Connor, Kingston, Holder and Forrest, with whom he was also corresponding.2

Griffith replied, apologising for his calligraphy and assuring Deakin that none of his letter was secret, but adding that he thought the Labor party would oppose any move to accelerate his pension.3

Deakin wrote to Barton:
The general purport of his Griffith’s statements is that he cannot afford to throw up his present position except for a certainty but that he is prepared to take the plunge if satisfied that he can do so without injury to those dependent upon him. This means that he is willing to accept office in a Federal Ministry i.e. say the Attorney Generalship with a reversionary claim to the Federal Bench and probably the Chief Justiceship.

While Deakin admitted that he was speculating, he was “more convinced than ever that there is no-one in Queensland but Griffith” Barton warned against beginning with “bargains about great offices”. He had little sympathy with Griffith’s wish to be safely provided for, and in his reply to Deakin he accused Griffith of having left the federal cause years ago despite Barton’s entreaties. Deakin on 14 November told Barton he was “writing Griffith to explain that you have scruples which I think unnecessary”, and on the same day told Griffith that Barton was being characteristically indecisive.

In his reply to Deakin, Griffith stressed the importance of having a Queenslander in the cabinet:

No man has any right to commit himself to a positive policy for the Commonwealth until he has at least travelled as far north as Townsville.

But Barton feared Griffith had “lost touch” and was unpopular in Queensland. Also he did not want a ministry of lawyers, and already had Deakin, O’Connor, himself and possibly Kingston.

Griffith was busy with the Tyson case until he delivered judgment on 14 December. This was the last sitting of the Supreme Court and Griffith began the vacation lazily, spending most of the following week at home. On Friday he called on the governor, and on the weekend he went to Sandgate with Julia, and to church on Sunday. On Christmas Eve, he recorded in his diary: “Lyne offered [me] Federal Atty Generalship with promise of C.J.Ship”.

The offer to Griffith followed the summoning on 19 December by the Earl of Hopetoun, the new governor-general, of William Lyne, the premier of New South Wales, to form a federal ministry. All involved soon realised that this was a political blunder. Lyne tried hard to form a cabinet in the next six days, but failed. If Griffith recorded the telegram the day he received it, the offer seems a last desperate gesture, for late on the same day Lyne abandoned his efforts and advised the governor-general to send for Barton.

The offer may well have tempted Griffith. He was experienced, having been attorney-general in Queensland; he might have welcomed the opportunity of beginning the new federal system from inside its first legislature; above all he was being promised the position he most desired — the chief justiceship — from where he could control the working of the constitution he had framed. But he must have had qualms, and possibly confused loyalties, after his correspondence with Deakin, especially as he was unaware of the extent of Barton’s hostility to him. As well he knew the political realities and the weakness of Lyne’s potential support. In any case, the offer clearly lapsed when Lyne capitulated.

On 27 December Griffith left Brisbane for the federation celebrations in Sydney, where he met the new prime minister and members of his min-
istry. He also went on a water picnic with Reid, with whom he believed he had "a good deal of influence". He visited the Art Gallery with Inglis Clark and discussed federal courts with him. Clark reported conversations with Deakin who had told him Barton intended to remain in politics. Clark believed that if Barton's ministry remained in office long enough to appoint the High Court judges, Griffith would be offered the chief justiceship.

Whatever the offers and counter-offers, Griffith did not re-enter politics, returning uncommitted to Brisbane on 11 January. His unflattering diary entries on Barton and Dickson suggest his disappointment.

While in Sydney, Deakin had discussed the Judicature Bill with Griffith, who offered to draft it. He was sure the Queensland government would allow him the use of the government printer so that he could make a rough draft, and then correct it on the printed version: "I find it so much easier to express my ideas in a concrete form on paper than in the abstract". An incidental advantage was that, "I do not regard an alteration of a draft of mine as an affront — as some draftsmen are apt to do". He hoped to complete a draft of the bill and its rules within six weeks. Griffith began work on 6 February (after recovering from influenza) and by 28 March, two days before the first federal elections, the draft bill and rules were available in print.

Deakin, as attorney-general, made suggestions during the drafting, for instance on limiting direct appeals from state supreme courts to the Privy Council so as not to by-pass the High Court, and described the bill as a "marvellous achievement". He had further comments during April: the salary and pension clauses should be put towards the end of the bill; it must be decided whether the court would go on circuit or sit alternately in Sydney and Melbourne.

Griffith doubted whether he would be able to attend the formal opening of the first parliament in Melbourne, but eventually was able to go south, staying at Government House between 5 and 11 May. Griffith's pride was bruised at these celebrations by an unfortunate incident when he was excluded from the prestigious stand occupied by the Duchess of York at a review held at Flemington Racecourse on Friday 10 May. Hopetoun professed horror at the contretemps, and hastened to apologise:

had I been on the spot myself the mistake would not have been repaired in such a manner as to make you feel that you were not the welcome guest of Her Royal Highness . . . I greatly regret to think that one for whom I entertain so profound a respect and liking as yourself should have been made the victim of a misunderstanding between the Lieutenant Governor [Madden] and myself.

He had written to Madden and his aide-de-camp, Captain Wellington, to express his sorrow "if any carelessness of speech or in writing should have made me an unwilling accessory to the blunder".

Griffith's draft reply hastened to exonerate Hopetoun from any personal blame — he supposed it had been a mistake or misunderstanding by Madden or Captain Wellington — and went on,

as a matter of fact I had not reached the Stand when I heard what was happening. Personally I was rather glad because altho' I had felt bound to obey Sir J. Madden's invitation to accompany him to H.R.H.'s stand, I should have lost my only opportunity of meeting many friends whom I desired to meet.
Over two years passed between the introduction of the Judicature Bill in 1901 and its acceptance. The opposition to the bill argued strongly that the policing of the constitution would be best left to the existing judicial system — the six state Supreme Courts — with uniformity to be achieved by the limited right of appeal to the Privy Council. Amongst the supporters of a federal court, there was opposition to Griffith being appointed to such a court. Some of Deakin’s ministers, on being told he favoured Griffith for chief justice, protested that “no State Judge ought to be selected under any circumstances”.

Griffith knew nothing officially of the opposition to him, although friends gossiped to him about possible rivals, including Symon, Way and Barton. After the bill was through the Senate, Deakin wrote a “strictly confidential” letter to Griffith. It began, “It was always an ambition of mine to see a Federal Court of 5 judges presided over by yourself”, but then Deakin recounted how the bill had been mutilated: only three judges, no pensions, and lower remuneration than the Queensland chief justiceship. He asked if, on those terms, he could submit Griffith’s name. He assured him that no one else had been discussed in cabinet, although in private Barton and he had agreed that O’Connor would be a desirable judge.

Griffith replied immediately:

the great office of C.J. of the High Court which should be the greatest prize in the Commonwealth has been much diminished in attractiveness, both by the refusal of pensions and by the reduction of the number of Judges to 3. But it remains a great and honourable office. And, if my acceptance of it would be of advantage to the Commonwealth, I would not let the absence of a pension stand in the way.

There were, however, matters which needed to be settled: the seat of the court where his residence would be, travelling expenses, staff, the question of precedence. He suggested a meeting in Sydney on the following Saturday, which did not suit Deakin. He wrote another “strictly confidential” letter to Griffith revealing the 1901 opposition to Griffith’s appointment. Deakin anticipated this opposition would persist, especially as only three positions existed. He assured Griffith that since 1901 the cabinet members, even in private, had not mentioned the possible personnel of the High Court, and that consequently, despite newspaper stories, nobody had been approached either directly or indirectly. Recently, however, Barton had intimated that he felt under an obligation to offer one seat to O’Connor. Deakin was ready to nominate him in cabinet, and hoped that “if you are approved by them you will accept”. He tried to answer Griffith’s other questions as to location (Melbourne, until the federal capital site was ready for occupation), plans for circuits to all states, the possibilities of a fourth judge, the provision of an associate for each judge and travelling expenses for official tours. Precedence had not been settled, but “if I recollect aught the C.J. comes next after Prime Minister and Privy Councillors”. Deakin trusted that “arduous though the sacrifices acceptance must involve they will not alter your mind”.

Griffith was “surprised” by this letter, which put “a rather different complexion” on the matter, but his reply concluded with the sentence, “You are of course at liberty to say that you have reason to believe that I would not refuse it”.
Griffith heard nothing for over three weeks. It is clear that there was still considerable opposition in cabinet to Griffith’s appointment as chief justice. The question was inextricably intermingled with the future of Barton, who had been regarded as a possible candidate for the bench since the first discussion on the Judiciary Bill. Although he seemed to have eliminated himself on 7 August by his statement, “it is not, and never has been my intention” to appoint himself as chief justice, this did not end speculation that he intended to leave politics. Deakin had tentatively, on 24 August, asked Inglis Clark whether he was interested in the third seat on the High Court.

On 27 August Deakin had read a memorandum to the cabinet, in which presumably he had argued for the appointment of Griffith as chief justice. La Nauze cites Deakin’s diary entry on 28 August: “Determined [to] resign re H. Court.”. This decision was probably in response to continued opposition to Griffith’s appointment. Presumably Kingston advocated the appointment of Symon.

On 30 August, Tennyson, governor-general since Hopetoun’s resignation, had a long talk with Barton about the effect of his health on his future, urging him to leave politics and to take a justiceship. Letters followed on 7 and 22 September which make the intriguing clear:

you cannot in honour accept the C.J’ship but you can accept a Justiceship insisting that Griffith about whom we talked shall be C.J. and you would be honoured for your self-abnegation all over the English-speaking world. Your health, your family, your country all demand that.

Tennyson had written to Griffith on 11 August encouraging him to take the chief justiceship as well as writing to Deakin on 17 August urging this appointment. Tennyson’s actions, regarded by La Nauze as “highly improper”, were coincidentally following Griffith’s advice to Hopetoun to be more positive in presenting his own views to his ministers. As Tennyson also stated that “O’Connor the splendid leader of the Senate would be the other Justice”, he as governor-general seems to have selected the actual team (Griffith, Barton and O’Connor) before any of his ministers!

Barton’s doctor advised him on 1 September that his expectation of life would be improved if he left politics. He discussed this with Deakin the same day. A deputation of members — presumably including the ministers who opposed Griffith’s appointment — tried to persuade Barton to accept the chief justiceship, but after discussion with his friends, particularly O’Connor, he agreed that Griffith should be chief justice, with himself and O’Connor the puisne judges.

The issue was discussed again in cabinet on 14 September. Lyne had been approached by Deakin as the possible successor to Barton as prime minister, but Lyne had, surprisingly, opposed Barton’s resignation as likely to injure both Barton’s reputation and that of the court itself. O’Connor thought Lyne’s game was a clear one of extortion: “if he does give way and consent to Barton’s appointment he must have the reversion of the Prime Minister’s position”. The cabinet on 14 September did not finalise the offers. Barton telegraphed to Griffith on 19 September:

Cabinet Council will consider High Court of Australia appointments Monday. Request permission to nominate you office of chief justice you would be allowed associate at or about £300 p.a. and special unpaid [assistant] or tipstaff.
Griffith immediately gave Barton his permission, and was informed on the 21st "colleagues in the Cabinet concur". Behind the formal politeness of congratulation lurked some doubts. Barton wrote to Deakin, his former attorney-general:

I still feel very queer about the new work. The trouble is mainly in the tearing away of old ties — the leaving of friends like you and Forrest, whose places none can ever fill. We must hope to meet as often as possible. I fear the new atmosphere will be rather heavy for me. Will it be easy to make Griffith laugh? I must try him in Court with something audacious.

Despite Barton's doubts, he was "sure it was right to appoint Griffith". He had always praised Griffith's legal ability and was soon to increase his respect for his "chief".

Way gave a more qualified, but interesting, verdict: "Griffith is narrow as well as hard and cold, but he brings experience, character and dignity

"Sam Griffith smiles": a cartoon of the Chief Justice from the Bulletin, 11 April 1912.
to the Bench and I am sure he will be fair in maintaining State rights'.

The same letter reported that Symon was very angry at missing an appointment.

Griffith began with high hopes for close relationships with his two colleagues. Although he had earlier privately characterised Barton as a ‘pratling fathead’, he respected his work for federation and presumably believed he would be a good federal judge. O’Connor had not been a close friend, although they had met in Sydney. These three judges were to concur in almost all their decisions, many of which were written by Griffith.

Indicative of the relationship was a note from O’Connor to Griffith of 24 June 1906. O’Connor was discussing how far an earlier decision of the High Court should bind its members. While he agreed that any decision could be ‘challenged discussed and over-ruled’, he thought that the judges should be unanimous. The working rule he suggested for guidance, not of course to be made public, was that where there was disagreement and the judge in the minority so desired, a new hearing should be ordered.

All three judges were founding fathers of federation, and they knew the precariousness of the union that they wished to perpetuate, and appreciated that the constitution was intended to hold a balance between commonwealth and states. Their interpretative role was to ensure the balance was maintained both to perpetuate federalism and to guard against the express and incidental powers of the commonwealth unduly abridging the ‘reserved’ powers of the states.

The High Court had many non-constitutional functions. Primarily it was a court of appeal from the Supreme Court of each state, as the Privy Council had been.

Griffith and his colleagues were sworn in at Melbourne, where the principal registry of the High Court was located, with branch registries in all the other state capitals. Griffith lived in hotels wherever the court was sitting, although he retained his beloved ‘Merthyr’, regarding himself still as a Queenslander.

The running costs of the court were an issue from its opening. For instance, when stationery was ordered for the Sydney registry early in 1904, the state government printer demurred: ‘in accordance with instructions from the Federal Treasurer it is necessary that we should have the assurance that ‘funds are available’ before proceeding with Commonwealth work’. A private printer supplied the paper. Likewise when Griffith’s associate, his son Percy, required a typewriter, its purchase was not authorised, so he hired one.

Despite these disagreements, good relationships were established between the judiciary and the executive. Senator Drake was Deakin’s attorney-general and he, an ex-Queenslander, barrister and politician, deferred to the experience of Griffith. Likewise good relations were to exist with H. B. Higgins, attorney-general in the brief J. C. Watson Labor ministry of April–August 1904.

Griffith and his colleagues wished the High Court to sit in the state capitals, and in this they were supported by the politicians. Most prospective litigants seemed to favour attending in the capital city of their state; for instance, both Sydney solicitors in a case in February 1904 preferred a chambers hearing in that capital to one in Melbourne. The High Court
began circuits in its first year, sitting mainly in Melbourne and Sydney, but also in Hobart in April, Brisbane in May, and Perth in October. Griffith did not sit in Adelaide until November 1905.

Parliamentary suspicion about the court’s activities and expenses led to requests for details. The Sydney registry’s first annual return on 4 November 1904 showed that the judges had sat on fifty-five days; there had been six appeals to the Privy Council, and twenty appeals to the High Court. The Sydney registry made a modest estimate of sixty pounds for its internal expenses for 1905–1906.

The good relationships between the court and the commonwealth government ended on 18 August 1904 when Symon became attorney-general in the Reid–McLean ministry. Under the Judiciary Act, the three judges had requested reasonable travelling expenses, with an allowance for associates. In November 1904 Griffith wrote to Reid about his own expenses, saying he and his wife had decided they must move to Sydney as soon as possible in the New Year. He wanted Sydney to be the principal seat of the court, though it should be moved to a more central position than the suburb of Darlinghurst. Barton and O’Connor already lived in Sydney, and most business was likely to be there. As well, Melbourne’s press had “essayed to brow-beat the Judges, as they have been accustomed to do to members of Parliament”. Wherever Griffith was located he needed his books: “I shall have to ask the Com. Gov’ to provide me with Chambers of sufficient size to hold my library which of course I must bring with me”, for which he would need adequate shelving.

Reid, in passing Griffith’s requests on to Symon, commented that Griffith had assured him that it had been “specially agreed before his app’ that his residence should be Brisbane and travelling count from there”. This agreement was queried by Symon, whose letter of 23 December 1904 opened six months of bitter dispute. The disappointed aspirant for the High Court bench wanted the inflated travelling expenses reduced. He argued that the principal seat of the court was, and should continue to be, Melbourne, claiming it could not be Sydney because the constitution provided that the federal capital must be more than a hundred miles from Sydney. Symon also proposed that all appeals should be heard at its principal seat unless otherwise directed by the court or a justice. All expenses were to be computed from Melbourne, and from 1 January 1905 these were not to exceed a maximum of three guineas per day for a judge and his associate.

Griffith’s provisional reply, written before consultation with his two colleagues, defended circuits as a policy “adopted after full consideration and with the warm concurrence of the Federal Government” which had “received the approval of public opinion throughout the Commonwealth”.

Symon’s reply was hostile: questions of policy were for the executive and parliament alone; it was not advantageous for the High Court to defer to public opinion; and he personally doubted whether the public really approved of having expensive itinerant judges. He flatly refused to supply library shelving for Griffith in Sydney, did not believe any agreement had been made to provide it, but might consider some provision in Melbourne. The court could sit in Sydney on dates to be fixed by him, Brisbane appeals could be heard in Sydney, but all others were to go to Melbourne.
Griffith's reply was icy. He regretted that Symon had appeared to instruct the Justices of the Court as to the principles which should actuate them in the exercise of their discretionary power, but also to convey your disapproval of the manner in which they have already exercised them.

He was sarcastic about Symon's querying the agreement for shelving: "my experience in dealing with other Government Departments in Australia for a period of thirty years, has not been such as to suggest to me the necessity of formal agreements". In fact his shelving had been increased in Brisbane, and Barton and O'Connor had asked for, and obtained, shelving for the whole of their libraries. He had selected in Melbourne the only room available in proximity to the court, and it was entirely unsuitable for chambers in permanent occupation throughout the year. He threatened publicity if his library had not reached Sydney before the law term opened.

Symon opened his reply by noting "with amazement" this "minatory sentence", which was neither wise nor worthy of the High Court, and suggested that Griffith's lack of a library in Sydney had not apparently inconvenienced him or delayed suitors during the past fifteen months. As to Griffith's major attack, it was "entirely out of place and uncalled for, but the imputations are really too absurd to provoke resentment", since "the recognized immunity of the Judiciary from Executive control applies only to the exercise of their judicial function". Symon concluded that Griffith's contention "would make the Court the dictator and not the guardian of the Constitution". Symon's personal feelings were revealed when he intimated that he had played at least as great a part as Griffith in creating the federal judiciary: "as one who is proud of the High Court and who did as much as any man living for its establishment".

A meeting of the Executive Council on 20 January revoked the order-in-council of 14 October 1903 about travelling expenses. For an interim period, however, a certificate from each justice would be accepted as evidence of expenses up to the limit recently set by Symon. Expenses, Symon stressed, had to be computed from Melbourne.

The three judges sent three jointly-signed letters early in February. The first defended circuits, despite the inconvenience to the judges. They argued that the same counsel could be used, and that circuits gave judges, unlike the Privy Council, practical knowledge of local conditions. Periodic visits of the High Court to state capitals, especially those far from Melbourne, would also have the effect of "fostering and, it was hoped, maintaining, a federal sentiment".

The second letter refused to recognize Symon's "claim to instruct and censure the Justices of the High Court with respect to the exercise of statutory powers conferred upon them in their judicial capacity". Symon was attempting, they believed, to interfere with the independence of the bench.

The third letter dealt with travelling expenses and the question of the residences of the justices. It challenged Symon's claim that there was no agreement, by asking him to refer to Deakin or Drake. The Judiciary Act provided for reasonable expenses, and the judges could see no reason why any of them should be required to reside in one state rather than another. All three claimed as a right that their travelling expenses should continue to be computed as from Sydney, and described the attorney-general's
attempt to change arrangements as "an intolerable interference with the independence of the Bench".

Griffith had found a house in the heart of Sydney, "Albany", 199–201 Macquarie Street, which he occupied from February.

Defiantly the judges left for circuit in Hobart, Griffith on 16 February, the other two on 23 February. The court sat from 27 February to 4 March, after which they left for Melbourne. Symon replied on 22 February without shifting his ground: he believed that the £2,885 spent by the three justices on travelling expenses in fifteen months was excessive, and that £1,000 of this had been between Sydney and Melbourne. After the change made by the executive, any conflicting "rule of court is ultra vires and illegal and that the circuit which takes place under its assumed authority is also illegal".

Both sides had attempted to gain support: the judges appealing bitterly to Deakin (in a difficult position because he had refused office in the Reid–McLean ministry) and to Reid; Symon attempting to gain cabinet solidarity (which placed Reid in a difficult position, as well as Drake, the attorney-general in 1903 and now the vice-president of the Executive Council). Reid acted as peacemaker, meeting with Symon on 28 February, but Symon left an account of cabinet division and criticism of the justices. All involved hoped that the disagreement would not be made public; thus Deakin told Griffith on 28 February:

> whatever happens this correspondence must never be published. Nothing could do as much damage to the Court and its reputation or belittle its functions . . . at any cost to yourselves . . . for the sake of the Commonwealth and the High Court this correspondence ought to be destroyed.

The three judges wrote to Symon on 1 March reiterating their position, partly admitting that first year expenses had been heavy, but doubting whether they would be as high in the future. The justices wrote again on 8 March restating their position — a letter that Symon covered with hostile notes. He insisted that all vouchers for their travelling expenses be submitted to him personally.

Meanwhile the High Court continued its sittings: on nine days in Melbourne between 7 and 18 March (four cases) and on sixteen days at Sydney between 20 March and 19 April (nine cases). In April, Griffith wrote formally to inform Symon that the court intended to go on circuit to Brisbane at the end of May, probably the only sitting needed there during 1905. Symon's reply of 26 April refused permission for the Brisbane circuit and announced his further economy measures. The number of associates was to be reduced to one or two; the single tipstaff was also to act as usher. Telephones at Darlinghurst were to be cut from five to one. Steamer fares from Sydney to Hobart had to be paid by the judges because they held rail passes. He requested more information on Melbourne hotel expenses.

Symon's letter proved the last straw for the judges, who now planned to strike! On Saturday 29 April, Griffith announced in the High Court in Sydney that sittings in Melbourne were to be adjourned. The court would continue to hear urgent business in Sydney. A telegram was sent that morning to Castles, the principal registrar in Melbourne, to advise him that it would be followed by another requiring immediate action. Castles left
Beginning the High Court

(at 12.30 p.m.) before the second telegram came. Consequently, notices were not published in the press until the Monday, inconveniencing the parties, witnesses and jurors in the eight cases that had been set down for Tuesday. Griffith, through his son Percy, accused Castles of neglect of duty. On 9 May he accepted Castles' expression of regret, though still finding his explanation unsatisfactory, and repeated the reprimand he had made in a public statement on 5 May. In an interview with Reid in Sydney on 1 May, Griffith told him that none of the three judges would hold court in Melbourne if their travelling expenses were withheld. Griffith's diary records this as 'interview with Reid as to Symon's behaviour'. This led to disagreement between Reid and Symon, and Reid called an immediate cabinet meeting "to thrash matter out".

Symon telegraphed O'Connor to ask for his reasons for not sitting. Griffith replied: "Mr Justice O'Connor has handed me your telegrams of yesterday we cannot recognise your right to demand the reason for any judicial action taken by the Court except such request as may be made by any litigant in open Court". Scribbled notes by Symon reveal his frustration: "how can any Ct. because of disagreement as to Hotel Expenses go on strike? . . . no wharflabourers union do such thing"; "R[Reid] behind my back since 1 January. Neither fair nor loyal to me. Is he committed to them in any way. Did he make any promise or statement after our conversations 28 Feb. or any promise in Sydney now".

Symon made notes of the cabinet meeting of 6 May, which seemed a defeat for him. Reid now admitted that in his letter of 11 March he had told Griffith that Symon had agreed that expenses would be allowed if applied for. Reid wrote to Griffith asking the judges to request a reconsideration of Sydney-to-Melbourne expenses, and explaining that he had unwittingly done Symon a serious injustice by writing that the Melbourne expenses would be allowed. The High Court sat again on 9 May in Sydney, the first time since 19 April.

The battle was by no means over. Symon regarded Griffith's reply to his letter of 26 April as a studied affront; it was a curt note returning Symon's letter, unanswered, for reconsideration. Symon replied on 15 May that he was not aware of anything in his letter requiring reconsideration. On the same day, Castles wrote to Symon complaining of Griffith's public reprimand and asserting that he was accountable to the executive, not the chief justice. Symon, certain that Castles was not blameworthy, asked Griffith for an explanation of the reprimand. Griffith telegraphed Reid at Moree, asking for a reply before the court sat the next day. Reid answered that Griffith should deal with Symon, whereupon Griffith from the bench gave his version of why the 2 May sittings had been postponed for a week, defending the independence of the judiciary. One case was decided in Sydney on 26 May, then the High Court defiantly went on circuit to Brisbane where it sat between 30 May and 5 June before returning to Sydney.

Symon meanwhile waited for a communication from Griffith, but received none. On 8 June he dealt with the judges' requests and submitted his decision to cabinet. The judges anticipated the worst. Deakin had apparently tried unsuccessfully to intervene, and O'Connor believed that Reid had left the matter to Symon to carry out on the lines agreed. Symon
had published some of the correspondence — "just enough of it to whet the appetites of Parliament for the rest". Forrest was shocked "by the way the High Court has been dragged in the mire by Symon. I resent any interference with the High Court by the Executive Government". In the end, the cabinet decision was a compromise. Expenses would normally be computed from Melbourne, but so long as sittings continued in Sydney, justices living there would be allowed some concessions. When the permanent seat of the government was settled, the matter was to be reviewed. The rates were raised.

There was a final angry exchange between Symon and Griffith, with Griffith openly offensive, and Symon repeating the demand for payment of steamer fares from Sydney to Hobart and refusing to pay for Griffith's library shelving. He reduced associates' salaries from 1 July and announced that one usher would replace the three tipstaffs from 30 June.

The conflict ended with the defeat of the Reid-McLean government on 30 June. Northcote refused dissolution on 3 July, and two days later a new ministry was sworn in with Deakin as prime minister and Isaacs as attorney-general. Within a few weeks, the contentious issues had been settled: the judges kept their associates and tipstaffs; Griffith obtained his library shelves; and the High Court continued its circuits.

The High Court travelled to Perth in October 1905, to Hobart in February 1906, to Brisbane in April, and to Perth again in October-November. A pattern had been established which was maintained until Griffith left the bench.

At no time in the long dispute with Symon had anyone challenged the legal competency of the High Court judges. Their most important function was seen as interpreting the constitution, differing interpretations of which had emerged as soon as choice had to be made between the rights of the commonwealth and those of the states. Before the High Court was set up, decisions favouring the states had been made in the 1902 Victorian case of *Wollaston*, and in 1903 in Tasmania. The first important constitutional case to be heard in the High Court was the appeal in the latter case, *D’Emden v. Pedder*, in 1904. The issue was whether an officer of the commonwealth public service was liable to pay duty on his salary under the Tasmanian Stamp Act. D’Emden had been convicted by justices for not paying. His appeal to the Tasmanian Supreme Court was dismissed, Inglis Clark disagreeing.

Griffith upheld the appeal: the Tasmanian law should be construed as not applying. He argued that the commonwealth and each of the states was "within the ambit of its authority, a sovereign State, subject only to the restrictions imposed by the Imperial connection and to the provisions of the constitution, either expressed or necessarily implied".

The constitution had provided that when a law of a state was inconsistent with a law of the commonwealth, the latter should prevail, and an attempt by a state to interfere with "the free exercise of the legislative or executive power of the Commonwealth . . . unless expressly authorized by the constitution, is to that extent invalid and inoperative".

He considered analogous decisions in the United States, starting with Chief Justice Marshall's judgment in the case of *McCulloch v. Maryland*. Although these did not bind the Australian High Court, Griffith believed that
Beginning the High Court 267

it would need some courage for any Judge at the present day to decline to accept the interpretations placed upon the United States Constitution by so great a Judge so long ago as 1819, and followed up to the present day by the succession of great jurists who have since adorned the Bench of the Supreme Court at Washington.

Griffith argued that the High Court was entitled to assume that some of the founding fathers of the Australian constitution were familiar with the constitution of the United States: "it is not an unreasonable inference that . . . like provisions should receive like interpretation". He ruled that the Tasmanian act interfered with the action of a federal officer in relation to the commonwealth.

A similar decision was reached in the "Income-Tax" case, Deakin and Lyne v. Webb (the Federal Commissioner of Taxation), heard at Melbourne between August and November 1904. In the Supreme Court of Victoria, led by Chief Justice Madden, the judges had followed Wollaston's case. By applying the principle of D'Emden v. Pedder, Griffith and his colleagues upheld the appeal, ruling that federal political salaries were, insofar as they were earned in Victoria, not liable to assessment under the Victorian income tax acts. The Victorian court had followed Privy Council rather than United States precedents. While Griffith denied that the High Court had a preference for one or the other, he proceeded to amplify his earlier discussion of the federal constitution, particularly its relationship to that of the United States. The distribution of powers had followed that model [listing federal powers only] rather than that of Canada [where an attempt had been made to enunciate all possible subjects of legislation and to distribute them exclusively between the dominion and the provinces]. The case followed by the Victorian court had been decided on the interpretation of a power given exclusively to the provinces, and Griffith argued that, as it was impossible to apply arguments from the Canadian constitution to the Australian, that case had no bearing.

The respondent, supported by the premiers of every state, moved for a certificate allowing an appeal to the Privy Council, but the High Court refused. Griffith saw the question was one as to the limits inter se of the constitutional powers of the commonwealth and a state, so by section 73 the High Court judgment was final and conclusive. He could find no "special reason" for granting a certificate to appeal.

Inglis Clark wrote to Griffith to congratulate the court on its refusal of leave to appeal which, if granted, "would have virtually deposed the High Court from the superior position in which it has been placed by the Constitution in regard to constitutional questions". He distrusted not only the Privy Council, because of its lack of knowledge of federal constitutions, but also Victorian judges: "I suppose Madden and Co. feel sore, but it is a matter of supreme satisfaction to me that the elaborate rubbish contained in the judgement in Wollaston's case had been effectively killed and buried".

In Peterswald v. Bartley, Griffith discussed the important doctrine of "implied prohibitions". In construing the constitution, regard must be had to its general provisions as well as to particular sections . . . to ascertain . . . whether the power . . . was intended to be withdrawn from the States, and conferred upon the Commonwealth. The Constitution contains no provisions for
enabling the Commonwealth Parliament to interfere with the private or internal affairs of the States”.

Applying this doctrine, Griffith held that brewers’ licence fees under a New South Wales act were not “duties of excise” within the meaning of sections 86 and 90 of the constitution. The imposition of uniform custom duties throughout the commonwealth was separate; the brewer was required to pay licence fees under both the state act and the commonwealth Beer Excise Act.58

On 17 December 1906, in the Railway Servants’ case, Griffith and his colleagues again applied the principle of *D’Emden v. Pedder*, this time in favour of the states. The Commonwealth Conciliation and Arbitration Act (1904), so far as it purported to extend to state railway employees, was *ultra vires* and void, so that an organisation consisting solely of employees on state railways was not entitled to be registered under that act.*59*

Eleven days before this judgment, the Privy Council expressly disapproved the decisions in *D’Emden v. Pedder* and *Deakin and Lyne v. Webb*. This was in *Outtrim v. Webb*, where the judgment read by Lord Halsbury held that Victoria could tax federal officials.*60* The state had lost this case in the Victorian Supreme Court and had appealed directly to the Privy Council, so bypassing the High Court. Halsbury specifically denied any analogy between the United States and Australian systems of jurisprudence, and saw no implied prohibitions in the Australian constitution. He suggested that the provisions of the 1903 Judiciary Act, which Griffith had drawn up, insofar as they prevented federal cases from reaching the Privy Council direct from state courts, were probably invalid.

Griffith reacted strongly both outside and inside the High Court. Wise, who was practising law in London, suggested to Griffith that he should go to London and protest during the 1907 Colonial Conference. Griffith told Deakin on 28 December 1906 that he had “no desire to be there unless I am wanted, which, I suppose is unlikely”. He had not yet received the full text of the judgment, but was anticipating reading Halsbury’s “views on the constitution, of which he knows about as much as he did about Calvinism when the Free Church case was decided”. Although Deakin believed it might be Griffith’s duty to go to England to criticise Halsbury’s decision formally and officially, he considered that Griffith’s position in England would not be equal to his status in Australia in defending the High Court. Deakin asked his chief justice for guidance as to future federal legislation, observing realistically that “the question of tax paying is not a good ground to fight our constitutional battle”. Griffith, after reading Halsbury’s judgment, strongly attacked him privately:

If he is right, none of us have ever had the least idea of the true meaning of the Constitution; the fight about the 74th clause was beating the air; and the High Court regarded as a guardian of the Constitution is a mere chimaera — since every law of a State not in express terms contradictory to some Federal Law is, when assented to, unexaminable. No High Court was wanted, if that is so.*61*

Griffith agreed that Deakin should amend the Judiciary Act to strengthen the role of the High Court.

Inglis Clark told Griffith he had read Halsbury’s judgment with “amazement”: “if it contains a true exposition of the relations of the Common-
wealth and the States under our constitution, we are committed to perpetual conflict and chaos in the future". He suggested that Griffith ask Deakin to amend the constitution either to abolish all appeals to the Privy Council, or to provide that all courts in the commonwealth could declare whether any law of a state or of the commonwealth was inconsistent with the constitution. O'Connor suggested to Deakin that he should pass an act preventing "the King from granting special leave to appeal from the decision of the High Court in any case involving the interpretation of the Constitution . . . there is an opportunity of freeing Australia entirely from the risk of having its constitution re-made by the Privy Council".

Deakin urged caution, as Australia was "passing thro' the reaction that was experienced in the U.S. and Canada for the States and against the Commonwealth".

The opportunity for the High Court publicly to declare itself came in Baxter v. Commissioner of Taxation heard in Sydney, with Griffith delivering judgment in Melbourne on 7 June 1907. Griffith read the judgment on behalf of himself, O'Connor and Barton. The recently-appointed judges, Higgins and Isaacs, dissented.

After outlining section 74, Griffith said:

No one disputes that in ordinary cases this Court is bound by the decisions of the Privy Council . . . But there is a great deal more. For the first time in the history of the British Empire a Court has been established as to which it has been declared that no appeal shall be permitted from its decisions on certain questions unless the Court itself certifies that the question is one which "ought to be determined" by the Sovereign in Council.

He reviewed the history of federation as a background to interpreting section 74, illustrating its relevance by recounting the clash between the Legislative Assembly and Legislative Council in Queensland in 1885 that had led to an appeal to the Privy Council, which had decided in favour of the Legislative Assembly. Whereas, in Griffith's view, "if the Queensland Constitution had been technically construed without regard to its subject matter the result must have been different". Griffith, implicitly attacking Halsbury, continued:

the object of the advocates of Australian federation . . . was not the establishment of a sort of municipal union, governed by a joint committee, like the union of parishes for the administration of the Poor Laws, say in the Isle of Wight; but the federation of an Australian Commonwealth embracing the whole continent with Tasmania, having a national character, and exercising the most ample powers of self-government consistent with allegiance to the British Crown.

He then argued that the histories of the federations of the United States of America, Canada, and Switzerland were relevant:

the relative advantages and disadvantages of these several systems were weighed by the founders of the Constitution. If it is suggested that the Constitution is to be construed merely by the aid of a dictionary, as by an astral intelligence, and is a mere decree of the Imperial Parliament without reference to history we answer that that argument, if relevant, is negativied by the preamble to the Act itself.

Continuing his attacks on the Privy Council, he cited Bryce, an eminent
English constitutional authority: "if the American Constitution [which is also a written instrument] had been dealt with by the Supreme Court of the United States in the same manner in which the Dominion Constitution was treated by the Judicial Committee the United States would never have grown to their present greatness". Griffith argued that in the United States, where "every citizen owed allegiance to, and was bound to obey the laws of two distinct Governments conflicts had continually arisen", in which the Supreme Court had acted as arbiter and had built up a large body of acceptable constitutional law. In contrast, the decisions of the Privy Council in Canadian cases

had not given widespread satisfaction ... the Constitution of the United States was a subject entirely unfamiliar to English lawyers, while to Australian publicists it was almost as familiar as the British Constitution.

After reviewing the Australian constitution, particularly section 74, Griffith affirmed that "the purpose ... was that the Australian people should have their domestic disputes settled finally by a domestic tribunal, and that in this respect a larger measure of independent self-government should be conferred upon them than had ever been previously conferred in the case of any British Dependency".

The Privy Council, by section 74, was bound to accept and follow the decision of the High Court on \textit{inter se} matters. An appeal to the Privy Council could only be allowed by a decision of the High Court, and "it would not, perhaps, have been extravagant to expect that the Judicial Committee would recognize the intention of the Imperial legislature to make the opinion of the High Court final in such matters. But that is their concern, not ours". He reiterated:

the intention of the British legislature was to substitute for a distant Court, of uncertain composition, imperfectly acquainted with Australian conditions, unlikely to be assisted by counsel familiar with these conditions, and whose decisions would be reached many months, perhaps years, after its judgement has been invoked, an Australian court, immediately available, constant in its composition, well versed in Australian history and conditions, Australian in its sympathies and whose judgements, rendered as the occasion arose, would form a working code for the guidance of the Commonwealth.

The High Court was not, therefore, in any way bound by the decision of the Privy Council in \textit{Webb v. Outtrim}.

The Privy Council's decision was then analysed: the council seemed to have ignored "the great authority" of Marshall, apparently because "they thought there was no actual analogy between the two Constitutions so far as regards the express provisions relevant to the question".

Griffith claimed the analogy between the two systems of jurisprudence was valid: their two highest courts had been similarly created; the powers of the American and Australian states were parallel; the term "unconstitutional" in both meant no more than "\textit{ultra vires}". A possible difference, the position of the British monarch, was irrelevant since

the attribute of sovereignty, using that term in any relevant sense, is denied to the Commonwealth. The King is the common head of the United Kingdom and of all the self-governing dominions, and the legislature of each of these
dominions has, subject to its own Constitution, full autonomy. It seems strange then in this year 1907, when the world is resounding with the praises of the system of the British Empire, which allows its different members to enjoy this freedom and independence, we should be asked to decide solemnly that the idea is an entire delusion.

The king, as the head of each of these several autonomous states, is "so far a separate juristic person that differences and conflicts may arise between these States just as between other autonomous States which do not owe allegiance to a common Sovereign. It is too late to set up a contrary theory, unless it is intended to make a revolutionary change in the concept of the Empire".

Griffith believed that the Privy Council erred in referring to the power of the sovereign to disallow Australian federal or state legislation, as the constitution made provision for its alteration by referendum "showing the plain intention that the people of the Commonwealth were to work out their own destiny with all the freedom that is consistent with allegiance to the British Crown". Practically it would be very difficult to determine if proposed acts would interfere with the sovereignty of other members of the federation.

Griffith's judgment overall was a strong attack on the Privy Council, even if its language was by no means unprecedented for appeal judges overruling their "learned" brothers. Its effect was somewhat diminished by divisions within the High Court.

The work of the High Court increased rapidly. Griffith heard only three cases in the last two months of 1903, but fifty-four in 1904, sixty-eight in 1905, and ninety in 1906. Two new judges, Higgins and Isaacs, were appointed during 1906. There is no evidence that Griffith was consulted on their choice. Isaacs in 1903 had not approved the appointment of Griffith as chief justice: "I look upon Griffiths (sic) as a past number. He struck me as just a bit 'frayed'".

The separate judgments of the two new judges disagreed with the majority. These new judges were in a difficult position for they agreed with the three original judges on the lack of understanding of federation in Britain. Higgins, especially, disagreed with the doctrine of implied prohibitions and the degree of reliance on Marshall. Isaacs argued that the High Court could decline to follow the Privy Council. Respect for it, however, required reconsideration of the High Court's decision in Deakin v. Webb, with which he disagreed. Higgins went further: nothing in the constitution made the High Court the final authority on any kind of law. The constitution should not be extended by implication in the direction of infringing the prerogative of the Crown; it was the duty of the High Court to accept the decision of the King in Council as the final statement of the law, and he agreed with Isaacs that in this case the state act was not an interference with federal instrumentalities.

Despite the conflicting judgments and the disagreement with the Privy Council, the majority of the High Court refused to grant a certificate of appeal to Britain in the case.

In 1907, Deakin revised the Judiciary Act to make it more difficult for appeals from state supreme courts to reach the Privy Council. On 28 November 1907, the Privy Council refused special leave to appeal Baxter's
case, and on 14 January 1908 Lord Loreburn gave the reason: the commonwealth's act authorizing the taxation (passed by Deakin in 1907) meant that the "controversy cannot be raised again". Griffith's charges in his judgment thereby remained unanswered, as Sawer says "the ball was in the High Court", which had by 1908 effectively established itself as pre-eminent (above both the state courts and the Privy Council) in interpreting the constitution.

Another constitutional subject on which the judges were to be divided was conciliation and arbitration. Griffith and Barton gave a narrow interpretation to the commonwealth's power "for the prevention and settlement of industrial disputes extending beyond the limits of any one State" on the grounds that each state also had sovereignty over these matters. O'Connor, on the other hand, who was made the first president of the Commonwealth Court of Conciliation and Arbitration in 1904, interpreted this power broadly, as did Higgins (his successor as president from 1907) and Isaacs. Hence a majority was to favour the extension of commonwealth action and, in Higgins's words, a whole "new province of law and order" was developed for federal decisions.

In the *Clancy* case, Griffith showed his desire to limit the arbitration court's control over "industrial matters". It should not, he ruled, cover employment after the hours provided for closing. He also held that the court could not control the amount of work which the employer was to provide: "If it were so the Arbitration Court would have a new power . . . to regulate the carrying on of an industry at large".

Likewise in 1904, Griffith held that the court of arbitration had no jurisdiction to entertain an application to have the terms of an industrial agreement that had not been made an award of the court declared a common rule. Two unions had made an agreement with a firm on a code for shop assistants, and now requested it be applied throughout the state. Griffith argued that "the great fundamental principle of our jurisprudence is liberty. When it is alleged that the liberty of individuals may be restrained, the party alleging the right of restraint must establish by some Statute or by judicial decision that the liberty has been restricted". If this agreement were made a common rule, it would be unenforceable against strangers to it.

Griffith and his colleagues, in another case in 1904 held that as royal commissions of inquiry were lawful, the High Court had no power to restrain persons acting under their authority, provided there was no invasion of private rights or interference with the course of justice. Hence the secretary of a shearer's union should be required to give evidence to a commission. One of the grounds of objection was continuing litigation between this shearers' union and the Australian Workers' Union, but Griffith found this irrelevant to the legality of an inquiry. He stated that the

*Arbitration Court is a Court lately established in New South Wales and is to a certain extent an experiment in legislation . . . the machinery of the Arbitration Act may not work exactly in the way intended . . . How the Act does work, and what are its legal effects, can only be authoritatively determined by judicial decision in a suit between two parties.*

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*Samuel Walker Griffith*
Griffith and his two colleagues agreed in 1905 that the arbitration court had no jurisdiction to entertain a union application to have the court regulate conditions of employment, unless an industrial dispute existed. If a union was dissatisfied with the conditions of peace and quietness which exists, and wishes to have an industrial dispute . . . the contention is that it is entitled to interfere and invoke the aid of the Arbitration Court not to quiet an existing dispute, but to create a case and get it settled. I cannot think that that was the intention of the legislature. ^2

In an appeal lasting from November 1907 to October 1908, Griffith and three other judges upheld Higgins's decision that the federal arbitration court had the power under section 51(35) of the constitution to register an association of employers or employees even if incorporated in one state only. Griffith, in reviewing the extent of the new court's powers, was restrictive. He argued that it could not make laws for collective bargaining, and gave a "tentative" definition of an "industrial dispute":

where a considerable number of employees engaged in some branch of industry make common cause in demanding from or refusing to their employers (whether one or more) some change in the conditions of employment which is denied to them or asked of them.

The federal arbitration court could only intervene in existing industrial disputes extending beyond the limits of any one state, and he warned that a section of the act purporting to control intrastate organisations could be ultra vires. ^3

Constitutional cases made up only a small percentage (6.1) of all cases heard by Griffith. A closely related group dealt with conciliation and arbitration (6.9 per cent). The other cases (given here in percentages) were not dissimilar to those he had heard in the Queensland Supreme Court: 13.1 involved the interpretation of statutes (other than the constitution); 11.5 centred on contracts; 10.2 depended on questions of practice and procedure, 8.7 on property law and 8.1 on probate. The remaining cases concerned income and land taxation (6.1), patents and trademarks (4.9), domestic (divorce, lunacy etc.) (3.9), torts (3.9), criminal (3.8), insolvency (3.5), mining cases (2.3), customs matters (2.3), foreign issues (including immigration) (2), electoral cases (1.4), admission and suspension of lawyers (0.6), and a lone admiralty proceeding (.1). In all these matters the new bench, led by Griffith, was to set the accepted standards for Australian law. The statistics mask the variety of these cases, which provided such a mixed diet to meet Griffith's compulsion to work. ^4

The largest group of cases heard by Griffith involved the interpretation of particular statutes. His court, in its appellate jurisdiction, exercised a function similar to that of high courts of the states, although the analogy was often closer to Privy Council's hearings. Resentment may have been expected when the decisions of the Supreme Courts of any state were reversed, particularly in those states that did not have a representative on the High Court, and even in Queensland and New South Wales some suspicion existed. It is a tribute to the new judges that appeals were generally accepted, and indeed many barristers advocated taking this additional step to obtain justice.

However, a clash was to develop with the Victorian Supreme Court,
which was partly a personal argument between Griffith and Madden. In Griffith’s first case involving statutory interpretation (in November 1903), he made a general statement that must have reassured judges of the states: “This Court”, he said,

would . . . be reluctant, as a general rule; to put a different construction upon the Statutes of a State from that which the Supreme Court of the State itself has declared to be their true construction; at any rate unless its decisions were directly connected by way of appeal, either from the same Court, or from the Supreme Court of another State in a case involving the construction of identical words.\(^\text{75}\)

The particular case was the first in a series arising from the transfer of public service departments listed in section 69 of the constitution of the commonwealth. Did the officers retain all their existing and accruing rights? Griffith examined section 69 (and related section 84) and their inter-relation with the commonwealth and state public service acts. In this November 1903 case, he ruled that section 84 applied only to the time of transfer; salaries could be altered subsequently. In a similar case, he ruled that the intention of section 19 of the Victorian Public Service Act could only be to fix salaries when the departments were transferred, and could not be extended to entitle officers to receive increases subsequently made in any state.\(^\text{76}\)

In a third case examining the same section, Griffith pointed out that the Victorian act had been passed in December 1900, four days before the federal constitution came into force.

it could not have been contemplated that, after that compact was made and ratified by the Imperial Parliament, and was shortly to come into operation, any of these States could create an entirely new right to be imposed upon the other parties to the compact without their consent.\(^\text{77}\)

The 1902 Commonwealth Public Service Act applied to officers transferred from the states, even if its provisions reduced their salaries.

In reversing a decision of a New South Wales judge, Griffith made a general interpretative statement that had become a refrain in his judgments:

this Court is asked . . . to construe a Statute, not according to the language used by the legislature but according to some notion of what the legislature might have been expected to have said, or what this Court might think it was the duty of the legislature to have said or done. But the duty of the Court is to examine the language used, and to give effect to it, whether it approves or disapproves of what the legislature has provided, or whether it thinks or not that the legislature might more properly have done or said something else.\(^\text{78}\)

Strict interpretation of the 1902 Cattle Slaughtering and Diseased Animals and Meat Act exempted the proprietor of a tallow and salting beef factory (for export) from giving notice to a meat inspector of killing cattle. This was so even if he also sold some surplus fresh meat locally.

Griffith was not a narrow pedant. In interpreting sections of the 1902 New South Wales Building and Co-operative Societies Act he clearly defined what he saw as the functions of the judiciary:

I would make this observation. Interpretatio chartarum benigne facienda est ut res
Beginning the High Court 275

magis valeat quam pereat [in interpreting deeds it is preferable to give effect to their provisions]. I think these words should be written in letters of gold in every Court that is called upon to administer laws made in Parliament, so that the Court may remember that they are a co-ordinate branch of the Government, not sitting for the purpose of frustrating, but for that of giving effect to the wishes of the legislature.

In this case, Griffith reviewed legislation on Friendly Societies from 1843, before holding that under the 1902 act, the Supreme Court, rather than the district court, had jurisdiction. He also validated the appointment of a new trustee, although prescribed formalities had not been carried out, and ruled that property be vested in the new trustee without any conveyance by the retiring trustee, such action being covered by the word "removal":

the legislature has . . . stated in the plainest language, as it seems to me that the property of the society shall be vested in the trustees for the time being . . . the case is within the literal meaning of the words as well as the obvious intention of the legislature.79

He refused to accept a more literal meaning of "removal", which would be a trap to lead societies into confusion. Isaacs agreed with Griffith, but Higgins dissented, interpreting "removal" to imply exercise of compulsory powers by some external authority and not to include resignation or retirement.

An early property case concerned resumption of land by a minister for education. Griffith argued that statutes were not to be construed as interfering with vested interests unless that intention was manifest, and that the possessor of land had certain defined rights: "whether we sympathise or not with persons who, to use an Australian expression, are called 'jumpers', that is the law and the policy of the law". The High Court reversed the decision of the Supreme Court, holding that when the minister resumed land (under the 1880 Lands for Public Purposes Acquisition Act) the person in possession of the land was entitled to a valuation and compensation, and if the minister refused he could be compelled by mandamus. The Privy Council affirmed this decision in December 1906.80

Griffith outlined his approach to probate in a typical case:

it is ... necessary in every case to construe the whole will to see what the testator meant.

At the same time there are certain recognized rules of construction. Indeed, it cannot be denied that so long as it is the function of Courts of Justice, which are supposed to consist of competent lawyers, to interpret wills, they must apply some rules of construction in exercising these functions, and those rules are applied not only to wills but to all other solemn documents.

He then considered three rules applicable in the absence of a context showing a contrary intention. In this case the will provided that the eldest son was to take the estate when he became twenty-one. It also provided that if he died "before becoming of the age of twenty-one, or unmarried, or without male issue", the second son should inherit with similar provisions to the third and fourth sons. Griffith held that the provisions under which the second, third and fourth sons were to inherit were to be determined before the eldest reached twenty-one, so that when he reached that age he took an absolute interest. He applied precedents whereby the word "or"
(underlined twice) in similar phrases had been interpreted to mean “‘and’ and agreed such a change ‘gave a complete and homogeneous meaning to the whole will’. He therefore affirmed the decision of the Victorian Supreme Court.

In its first case devoted exclusively to taxation, the High Court in 1905 by a majority (Griffith and Barton against O’Connor) reversed a decision of the New South Wales Supreme Court. The issue was whether money received for selling a mine should be classified as “‘capital’ or ‘income’.

Griffith saw the question as depending on the interpretation of the 1895 Land and Income Tax Assessment Act, which included “‘profits’ and ‘gains’ as taxable amounts. The lower taxable limit on income was £200. The appellant received in the year £50 as income and £1,680 as part of the price of the mine. Griffith saw the proceeds of property sold as prima facie ‘capital’ and not ‘income’:

“It cannot, in my opinion, be successfully argued that because mining is a speculative enterprise the profit made upon the sale of a mine is necessarily such profits as are to be deemed income’.

In answer to the argument that all assessments made by the taxation commissioners were conclusive, unless appealed from, Griffith looked carefully at the statute. He concluded that the assessment was only conclusive as to matters within the jurisdiction of the commissioner. The only persons liable to taxation were those whose income exceeded £200 a year, so this appellant was not bound to furnish a return, and was not in default. The assessment of the commissioner was in excess of jurisdiction and therefore invalid. The appellant was not bound to appeal from it to the Court of Review but could wait until sued for the tax, and then dispute his liability. O’Connor found differently, believing that all persons in receipt of income were subject to the jurisdiction of the commissioners. The Privy Council on 4 July 1907 — although it agreed with Griffith that the proceeds of a sale of property were “‘capital’ and not ‘income’ — allowed an appeal on the grounds of regulations made under the 1895 Land and Income Tax Assessment Act which had not been brought to the notice of either Australian court. These required everybody enjoying an income to make a tax return, which became binding if not queried. Griffith was later to record his annoyance at such introduction of new material in appeal cases.

Griffith heard several cases on patents and trade marks. One of them, in which he delivered the joint judgment of himself and Barton, concerned patents obtained in 1899 and 1900 for improved cane-truck drays. Griffith described the problem; to transport cane from the fields to the mill, tram roads were laid, with subsidiary portable tram lines. However, the cane had still to be carried a considerable distance by hand or dray to the loading-point. The plaintiff, who had patented his invention in 1899, claimed that he

conceived the idea of combining the advantages of an ordinary vehicle, with tired [sic = tyred] wheels capable of being taken over uneven surfaces away from formed roads, with the advantage of a vehicle with flanged wheels designed for running on rails.

Griffith claimed that the merit, if any, of the earlier invention did not consist in the idea or principle, but in the means by which it was to be
carried into effect. There was no evidence of any infringement of the first patent by the 1900 machine, which did not contain all its essential and characteristic features.

Both sides accepted that the second patent had been correctly granted on an agreed principle:

a combination of two or more known mechanical appliances the result of which is to effect a new purpose, or to effect an old purpose with greater efficiency or economy, may be the subject-matter of a patent, if it involves some substantial exercise of the inventive faculty.

The second invention fitted this description, as the cart combined tyred with flanged wheels; it carted heavy crops with greater efficiency and economy than did the earlier invention. Even if simple, there had been a substantial exercise of inventiveness. Griffith dismissed claims of other examples of anticipation of the patented invention — the two cited were different and lacked the efficiency and economy of the one patented. Finally he was sure the defendant had infringed the plaintiff's 1890 valid patent, his wagon being a "mere colourable departure" from that patented.83

Griffith heard several cases in domestic jurisdiction, including matrimonial, divorce and lunacy. These began with a series in lunacy involving a solicitor, McLaughlin.

Griffith held that a power of attorney executed by a lunatic who does not understand what he is doing, when that want of understanding was known to those procuring the execution, was void. He found that McLaughlin had been of such unsound mind that when he executed the power of attorney he had no knowledge of what he was doing, except that he was signing his name — medically a mere mechanical act. Hence the transfers of shares to the two companies chosen by the wife assuming to act as agent with the power of attorney were invalid. The Privy Council subsequently refused special leave to appeal to it from this judgment.84

Griffith was in the majority (with Barton against O'Connor) in a later case. In 1902, McLaughlin was declared by the court to be of unsound mind and incapable of managing his affairs, with his wife made committee of his person. She signed an order for his admittance into a private hospital for the insane. McLaughlin told the police:

I certainly am not going quietly, it would be an act of lunacy were I, being a solicitor, to leave my house willingly under such circumstances, and proceed to a private lunatic asylum. You must remove me by force if you are determined to do so, and take the consequences.

McLaughlin recovered his sanity and sought damages for apprehension and confinement, and for trespass to his house. Griffith and Barton held that the Supreme Court should have stayed proceedings in what they saw as a vexatious action. Their majority view considered the High Court could disregard formal defects and irregularities, including the incorrect entitlement of this case under "lunacy". Griffith approved a doctrine from an English case:

it is ... wholesome ... to disregard points of mere form raised upon an appeal when they do not in any manner affect the substance of the subject ... and have not in any respect a tendency to mislead or prejudice the defendant.85
The next case involved the restoration of McLaughlin’s name in place of his wife’s to the share register. Following the earlier High Court decision, McLaughlin’s counsel had promised to indemnify the company for all monies received by his wife for selling the shares, and against any loss by the company. Griffith held that McLaughlin could not deny the authority of his counsel to make such a submission. It should be construed in context and, applying recognized rules of equity, McLaughlin was entitled to be relieved to the extent of the money spent by his wife for shares still held by the company. Thus, concluded Griffith, “we arrive at a conclusion which is in harmony both with law and with the plain demands of justice”.

After McLaughlin recovered his sanity, he refused to pay the costs of his solicitor, despite a court order. Griffith argued that these costs were necessaries, and that the court order did not over-rule the implied common law obligation of a lunatic to pay for necessaries, nor operate as res judicata as between him and McLaughlin.

McLaughlin sought an order that the bank deliver to him the title deeds of certain land, discharge a mortgage on it, and reconvey it to him. Following the earlier decision, Griffith repeated that the power of attorney, by which the wife had acted on this land, was void. The wife had executed the mortgage as security for advances by the bank, using the money to pay for necessaries for herself and her husband, and to open a trust account which was in credit. Griffith argued that

a contract made by a lunatic is not void, although it is voidable, [except in the case of necessaries] . . . it may become binding upon him if he by his subsequent conduct precludes himself from denying its validity . . . we think that it is of no avail for him to protest . . . if he nevertheless continues to enjoy the benefit of it . . . it must be said ’protesting he would ne’er consent consented’.

He recommitted the case to the Supreme Court to take account of monies paid for the benefit of McLaughlin.

In the final case against his bank, McLaughlin appeared in person. Griffith was not impressed. McLaughlin, in a somewhat incoherent address to the Court, invited it to believe that he was never of unsound mind, and that while under restraint he was the victim of a conspiracy between his wife and her medical advisers, but this contention is contrary to the plain facts of the case.

Griffith said the bank apparently did not take his assertions seriously “and after listening to him for three days, I am not surprised that they did not”. Griffith reasserted that the alleged power of attorney could not be set up as a valid deed, but that the bank could rely on any other authority which the wife may have possessed by legal implication, or which was established by any subsequent ratification by McLaughlin of her acts purportedly done on his behalf. He also referred to McLaughlin’s inaction [for instance in not claiming a refund for monies transferred from his account to a trust account], and concluded that the bank was entitled to hold the title deeds as security for all the sums in question. This conclusion conformed with one of Griffith’s most basic beliefs: “the law of England is generally consistent with common sense and common honesty, and if there are any exceptions I am not disposed to take an original part in adding to the list”.

In a case of custody, Griffith was in the majority (Higgins dissenting) in reversing a judgment of the Victorian Supreme Court. A father of a five-month-old child, her mother being dead, had given her to the custody of her maternal grandparents until she was nine years old. By certain acts the father had indicated his intention to abandon his right to her custody in favour of the grandparents, but had not otherwise disentitled himself to his natural right to custody. The father had remarried and had four children by his second wife. The grandparents were desirable guardians, and the child was happy. Griffith saw the question being whether the Victorian court had given less weight to the welfare of the child than to the natural rights of the father. He had no doubts:

it is clearly established to my mind upon the evidence that the happiness of the child would be greatly interfered with by the proposed change. It would be removed from a happy home, where it is loved and well cared for, to another home, where it would be a stranger and would probably be regarded with feelings of jealousy and as an intruder.

It seemed to him

a strange notion that the Court, when inquiring what is for the welfare of a child, should be asked to disregard what is generally regarded as an essential element of human welfare, namely, happiness.90

Griffith heard some cases in criminal law and in torts. The numbers were comparatively low because of a deliberate policy to give leave to appeal in such matters only when questions of great public importance were involved.

In a criminal case, Griffith claimed the real issue was whether a constable was justified under the 1900 Crimes Act in arresting without a warrant for any "crime" less than a felony. Griffith began by discussing possible ways of statutory interpretation: "the intention of the draftsman or legislator" might be sought from information "partly historical, partly arising from the practice of the police department, and partly from the notes in a text-book by learned authors", or an opinion could be formed by looking at the section "without any regard to the previous law on the subject". "But neither of these methods of interpretation is proper to be applied judicially." Instead Griffith reviewed the common law, previous New South Wales legislation of which the 1900 Crimes Act was a consolidation, and the particular section of that act. The end result was that he ruled that a constable was not authorised to apprehend without warrant for a suspected misdemeanour.91

In reversing a Victorian decision, Griffith considered a bank's responsibility for forged cheques. Cheques had to be signed by all three executors; after signature, one of the three had added new figures on five cheques. Was the bank responsible for paying the extra? The Victorian chief justice had instructed the jury that if the cheques had been drawn so negligently as to allow opportunity for forgery, the bank was not responsible. The jury found for the bank, and the Full Court had dismissed an appeal against this judgment. Griffith began with a precedent, an 1827 English case, and then examined the relevant principles of law (the relation of customer to banker was contractual, a relation of creditor and debtor in which neither party
should hamper the other in the performance of contractual duty). In the 1827 case, a husband had left five blank cheques with his wife who had given one to a clerk to fill in. The clerk, after showing her he had filled in the desired amount of fifty odd pounds, added a "three" and the words "three hundred and", on which the bank had paid. The court had found against the husband, and Griffith saw the case as authority for one point: "the drawer of a cheque may, by his negligence in connection with drawing it, disentitle himself to complain that the banker has paid a larger sum upon it than the drawer intended". He wondered whether the mere failure to take precautions against forgery amounted to a breach of the implied duty owed by the customer to his banker. After citing cases that had argued that "people are not supposed to commit forgery" — protection being the law of the land [the prevention of crime is perhaps better left to the operation of the criminal law than to the vigilance of individuals] — he concluded that

when a person signs a writing which is on the face of it a complete document, and issues it to another, he is not bound by any subsequent alteration of it made without his authority, and such authority cannot be inferred merely from the existence of blank spaces in the document.

He saw no evidence to go to the jury of any breach of duty on the part of the customer. The Privy Council confirmed this decision on 27 July 1906.

In a torts hearing on defamation, the High Court reversed the decision of the New South Wales Supreme Court. A trade newspaper had attacked the coupon manipulators, the crafty crew, be they Yank or Dago, Philistine, Gentile or Jew . . . [who] make enormous profits . . . the values of the so-called free gifts as prizes are unspeakably incommensurate with the prices paid for coupons. The whole thing is one-sided, unjust and an impudent attack on honest, struggling traders and on gullible, complaisant people.

Griffith had no doubt that the matter was defamatory, believed it was debateable whether its publication was justified, but questioned whether the article applied specifically to the plaintiff. Was it enough that it was capable of referring to him? The original judge had argued that the writer must have had the complainant in mind. The Full Court had refused to grant a new trial.

Griffith asked whether the "writer of matter defamatory of persons who are unknown to him, but are so described in the article that their identity is apparent to everybody familiar with the circumstances, is entitled to go free". He concluded that it was quite immaterial that no person had been mentioned by name, since "if the person who has been defamed can be identified by the words used, in such a manner that nobody can have any doubt in fact that he is meant, an action will lie. Here there can be no doubt who are the persons meant". The judge's direction had, therefore, been erroneous and a new trial must be granted.

Griffith heard insolvency cases, most of which involved detailed analyses of relevant state acts. One such case concerned the wife of an insolvent who objected to the trustee's inclusion in his estate of certain monies which, she alleged, she had saved out of her housekeeping allowance and deposited in a bank account in her own name, later using it to buy a grocer's shop. She also objected to the inclusion of a grocer's licence (which
was in her husband's name), that she said she had bought with her own money. The insolvency judge found for the wife, but the Supreme Court reversed this finding, disbelieving the wife's evidence. Griffith began with some elementary principles, which are as much principles of common-sense and natural justice as principles of law, but which — I say so with all respect — appear to have been sometimes inadvertently lost sight of by the learned judges in both Courts.

These were that an assignee has no better title than his assignor unless some statute gives it; that a plaintiff needed to prove his case; and that fraud must be alleged and proved, not inferred from mere suspicion. Griffith believed that the onus of proof had been thrown on the wrong party — the wife. Instead "it was for the trustees to show that the money was the money of the husband, unless some Statute changed that onus". Griffith applied the 1890 Married Woman's Property Act which declared that all bank deposits in the sole name of any married woman were to be deemed, unless the contrary was shown, to be her separate property. The trustees had offered no evidence to show the contrary. As to the grocer's licence, the trustees' argument was that it was a chose in possession of the insolvent and not a chose in action. Griffith applied the 1890 Licensing Act to ascertain the nature of a licence, which he deduced was not property but a personal right to carry on business in a particular place under conditions prescribed by law. He had no doubt that all or a large part of the money with which the licence was bought was the wife's. Griffith concluded that so far as the licence was personal, it belonged to neither the wife nor the trustees; so far as it was local, it belonged to the premises, which were proven to belong to the wife. The Victorian Supreme Court decision was reversed.

Griffith heard cases dealing with questions of customs duties. In one example he was in the minority with Barton when the High Court affirmed a judgment of the Victorian Supreme Court. By the schedule to the 1902 Customs Tariff, exemption from duty was given for pictures (not being advertising) including chromographs, whereas unframed manufactures of paper for advertising purposes were dutiable. The articles in this case were chromolithographs (which admittedly fell under chromographs) and black and white work mounted on cardboard with wide margins. Griffith tried to interpret the phrase "not being advertising", before finding that these chromolithographs fell under the exemption: "we have nothing to guide us as to the intention of the legislature beyond their language, which to my mind expresses that pictures made of paper which do not advertise shall be admitted free of duty". If the words in the schedule meant "for advertising purposes", he was also not convinced that these pictures fell within that definition, as there was nothing to show that they were specially fit for advertising rather than decorative purposes. He would not consider their "use", whereas the majority three judges believed that the principal or predominant use of such pictures should determine their classification — and they found that their chief use was for advertising.

Griffith was in the majority (Isaacs dissenting) when the High Court reversed a decision of a Victorian court of petty sessions. The issue was the alleged possession of prohibited imports — indecent articles, ash trays
and china figures. Griffith went through the section of the 1901 Customs Act which listed prohibited imports. He argued that "in the case of blasphemous articles they might be such that their character might not be apparent on their face. Indeed I take it that there are as many opinions as to what is blasphemous as there are men — *quot homines tot sententiae*". The section should be expanded to read "unlawfully have in his possession any goods unlawfully imported", where "unlawfully" meant "knowingly in contravention of this Act". Griffith concluded that the section was not intended to apply to unlawfully imported goods being in the possession of a person not connected with their importation, even if he knew they had been unlawfully imported.96

In the cases Griffith heard under the "White Australia policy", he applied the immigration acts strictly. Five Chinese discovered as stowaways when a ship arrived at Fremantle were arrested and charged with being prohibited immigrants. Their conviction was quashed on the grounds that the dictation test had not been properly applied. They were re-arrested, re-tested correctly, then charged again. The Western Australian Supreme Court, on appeal, ordered the cases to be transferred to the High Court.

Griffith gave short shrift to various objections to the 1901 act: for instance its relationship to Magna Carta (he saw any nonconformity with it as not worthy of "serious refutation") and to treaties (he said "some day perhaps that question may be raised for decision" but there was no treaty relevant to the present case). He agreed that the first conviction had been rightly quashed because the Chinese "had never been informed in a language which they could understand of what they were required to do" in the language test. But the "test whether a person's conviction is a bar to a further prosecution is whether the evidence necessary to support the second prosecution would have been sufficient to procure a legal conviction on the first"; he argued that it was, overruling the objection that the immigrant should choose the European language for testing: the words of the act make it "plain that it is for the officer . . . to select".

It was no defence that the Chinese were brought ashore in the custody of the law. To become an "immigrant" it was enough to have come into the commonwealth — the purpose of the act was to prevent entry; whether or not there was an intention to become a permanent resident was irrelevant. Although it had been established before the appeal that two of the Chinese had previously been domiciled in Western Australia, the convictions were still technically correct, as this had not been established at the trial. Griffith commented: "I think it is to be regretted that they did not ask for an adjournment of the cases in order to have an opportunity of tendering evidence to the officer".97

In another case, the deportation of a Pacific Island labourer raised the question of whether Australia had the necessary constitutional authority. Griffith asserted that it was an essential prerogative of every sovereign state to decide which aliens should or should not become members of its community. It was indisputable that Pacific Islanders were aliens by the law of Australia; indeed "it is impossible for them to become anything else". Section 51 of the constitution gave the commonwealth full authority to legislate on "naturalization and aliens".
Griffith also overruled the second objection in the case: that deportation would result in imprisonment on a ship beyond the three-mile territorial jurisdiction of the commonwealth.

The deporting State has no authority beyond its own borders. All it can do is to extrude the alien. What becomes of him afterwards is for him, not for them. It may be that it would be unreasonable to take him against his will to some place which is not his own home, but the remedy must be sought elsewhere.

He argued from the example of Switzerland excluding a Russian, Englishman or Spaniard; in each case the deportee would have to cross other countries over which Switzerland had no control — but that it had power to expel him was still beyond all doubt. For a sea-girt country such as Australia, every alien entering knew that he was liable to deportation and could only be deported by sea. Hence he had implicitly consented to any necessary shipboard restraint.98

The High Court decided it had jurisdiction to entertain an appeal from the Supreme Court of a state in a case of habeas corpus. A captain was ordered to bring a Chinaman before the court, and to explain his detention. The explanation that he was a prohibited immigrant was countered, as it was established that he had been naturalised. When it was asserted that the exclusion of British subjects did not extend to persons of Australian nationality, Griffith made a confident assertion: "We are not disposed to give any countenance to the novel doctrine that there is an Australian nationality as distinguished from a British nationality". He agreed, however, that immigration restrictions did not apply to "Australians" who were merely absent from their country temporarily.99

Another Chinaman, a boy aged fifteen, was convicted of being a prohibited immigrant. He had been born in China of Chinese parents. His mother had never left China, but his father had become domiciled in Australia. After the wife died, the father sent for his children, including this boy. Griffith applied the doctrine of domicile of an unmarried minor — if he were legitimate, it followed his father; if illegitimate, his mother. Griffith assumed legitimacy, although polygamy was allowed in China. Did this derivative domicile then give the right of entry? Griffith said not; the case concerned the right of a stranger to claim admission to a foreign country. It had been established that the commonwealth had full power to legislate about aliens; hence it could decide on the admission of the wife and family of accepted immigrants. Exceptions allowed for wives and families in the 1901 law had been repealed; each case was now considered separately. The boy could not "bring himself within any recognized rule that would prevent him from being regarded as an immigrant, and therefore, on failure to pass the statutory test, as a prohibited immigrant". It was, undoubtedly, a very hard case, but Griffith consoled himself with his usual refrain: "our duty is to declare, and not to make the law".100

Many of Griffith's cases were dominated by questions of practice and procedure. Most were based on minor technicalities, but some were highly significant, especially in setting the borderline for appeals. This issue arose in Dalgarno v. Hannah, in which the High Court rescinded its earlier motion granting leave to appeal. A cabman had been injured by the fall of a telephone wire belonging to the commonwealth government, which he
sued for negligence. The action was tried in the New South Wales Court in its federal jurisdiction, where he obtained a verdict. The Full Court dismissed an appeal. Five days later the Judiciary Act, drawn up by Griffith, received the royal assent and in October the High Court granted special leave to appeal. Griffith ruled that in cases substantially below the appellate amount (then £300), Privy Council rules should apply: leave would be granted only in cases of gravity involving public interest, or some important question of law, or affecting property worth a considerable amount, or otherwise of some public importance, or of a very substantial character. This case was on the borderline of special cases, and Griffith applied the court’s discretion in rescinding leave.

The High Court applied restrictions when refusing special leave to apply from a judgment of the Queensland Supreme Court. The amount involved, £150 and bonuses under a life assurance policy, was less than the applicable limit. It was claimed to be a matter of gravity and of public interest, but Griffith ruled ‘‘only in the sense . . . that the public takes great interest in the case’’, which was not the meaning intended in Dalgarno v. Hannah. No important question of law was involved.

The High Court allowed special leave to appeal from quashing by the New South Wales Supreme Court of a manslaughter conviction. Griffith did not see that the release of the prisoner was a bar, using a Privy Council statement that the duty in appeals was not only to ensure justice in individual cases, but also to preserve procedure. Section 73 placed no limitation on appeals in criminal cases, and important general questions existed in this case.

A significant clash with the Victorian Supreme Court developed in 1907. In March 1907 the High Court referred a decision back to the Victorian Supreme Court, ordering an enquiry as to damages. The Supreme Court ordered a stay in proceedings, as the Privy Council had granted special leave to appeal. Griffith, while agreeing that the High Court judgment had been misleading, charged that the Victorian action amounted to disobedience: ‘‘an order staying proceedings until further order is not an order in execution of a judgement of this Court, but is an order thwarting or obstructing the execution of that judgement’’.

This precedent was applied in March 1908, when the High Court again reversed a decision of the Victorian Supreme Court. Griffith described the issue as ‘‘of very great importance . . . [in] the relations between the High Court and the Courts of the States’’. This case had been remitted to the Victorian Supreme Court in September 1906 to do what was right in pursuance of the High Court’s judgment. Griffith stressed that this was within the High Court’s power under the Judiciary Act. In this case, as in the previous one, the Privy Council had granted special leave to appeal. The High Court at first granted a stay in proceedings, which it later partially withdrew, so that the judgment of the High Court came, to that extent, into full operation. When the proceedings reached the Victorian Supreme Court, the judge said: ‘‘The matter is now before the final Court of Appeal, and I think it would be a wicked waste of public time and a wicked waste of the private moneys of the parties to conduct the inquiry whilst that appeal is pending’’. Griffith confined himself to remarking that ‘‘the language is somewhat unusual to use in reference to a judgement of an
appellate Court". On another application to the Victorian Supreme Court, Chief Justice Madden again ordered deferral until after the Privy Council's decision:

the High Court cannot direct the Chief Clerk of the Supreme Court to proceed with these inquiries; and I am not the servant of the High Court, so that anything I do must be as Judge of the Supreme Court, according to the procedure of this Court, and there is no authority for the present application in the Rules of this Court.

Griffith's response was scathing:

Although the learned Chief Justice is not a servant of this Court, yet he is a citizen, and he is a member of the Court of the Commonwealth, and, by the express language of . . . the . . . Constitution, "all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the Courts, Judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State". The learned Chief Justice is therefore bound by the Judiciary Act 1903 just as is any private person and sec 37 of that Act expressly says that it shall be the duty of the Court to which a cause is remitted to execute the judgement of the High Court in the same manner as if it were its own judgement.

The appeal against Madden's order must be allowed. Griffith was also sure that the chief clerk could be directed by the High Court: "we will not contemplate the case of an officer of the Supreme Court refusing to obey an order of this Court".

A busy judge, Griffith needed good health. After Llewellyn's death in 1901, he had become obsessed with any sign of weakness. In 1904 he regularly reported his condition to Julia, thus on 4 June "I have kept very well except that my right heel aches, so that I cannot rest it on the ground in walking". He was very concerned over the health of his brother, Edward, who had a large tumour on his liver, very likely cancerous, so an operation was essential.

Griffith relied on regular exercise, mainly walking, to maintain his health. He walked for quite long distances wherever he was. In Sydney, "I walk up to Court (about two miles) and walk back". After working one Sunday in his rooms "and reading the Bulletin, I went for a walk in the Gardens and the Domain". His rooms were cold, unlike his "well warmed" chambers and court. He boasted to Julia from Sydney: "I can take the cold shower in the morning. It is not as cold as my shower would be in Brisbane". Despite his spartan regime, he suffered minor illnesses and gave Julia full details. After a long walk in the Melbourne Botanical Gardens, he wrote:

I think I must have got a chill, for I woke up yesterday morning with a slight sore throat. I took a Keating's lozenge and went to sleep again, and it had gone when I got up. But I had a slight cold all day, which in the afternoon became very bad, and after hearing Court I had a very bad hour — obliged to lie down with my eyes covered. Fortunately I am much better today, and it seems a one-day attack like I used to have. It is in the right nostril this time. The longer attacks I have had lately have all been in the left nostril.

The family was growing. The second son, Percy, no longer Griffith's associate, had found his niche on the land at "Auburn Vale", near Cudal in
western New South Wales. He married Marion (Clara) Doyle on 3 June 1907. Griffith’s third daughter, Edith (Edie) lived nearby. She had married Percy’s wife’s brother, the grazier George Doyle of “Cardington Hall”, Molong on 12 February 1907.

Griffith maintained his interest in education, and was an active member of the Sydney University Senate following his election on 30 July 1904. The three original High Court judges all became senators. It is hard to gauge Griffith’s contribution, as debates were not recorded, and he was an infrequent mover of motions. On 19 August 1907 he gave notice “that it be referred to the Professorial Board to consider and report upon the status, designation and emoluments of the Junior teaching staff of the University now called Lecturers and Demonstrators”, and this was moved and accepted on 2 December.

On 3 December 1907, Deakin was asked by a Melbourne University representative to try to influence the three High Court judges in the choice of the professor of chemistry at Sydney University. Some of the twenty senators favoured a Melbourne candidate, Dr Steele, over two Englishmen, one of whom, Morgan, was supported by the Chancellor, Sir Norman MacLaurin. Deakin contacted the three justices, who were sitting in Sydney, but it is not known how they voted when Morgan was elected by one vote on a second ballot.

Griffith, even before becoming a senator, had been invited, as an early graduate, to speak in 1902 at the fiftieth anniversary of the University of Sydney’s inauguration. He had stayed with Dr Sydney Jones at Strathfield from 27 September to 5 October, speaking on 30 September and attending most of the functions.

Griffith had gradually broken his links with Brisbane culture, resigning as trustee of its public library on 26 July 1906, and attending fewer meetings as trustee of its art gallery. He continued in Sydney to visit art galleries and exhibitions, for instance that of the Art Society in August 1907 with his daughter Gwen, where he was not impressed by a picture that had cost £5,750, telling Julia “it is about the same size as the Snow picture in the Dining Room, and not much better — only it is by a celebrated French artist [dead]”. He attended theatres occasionally, seeing The Taming of the Shrew in Melbourne in September 1908, but reading was his chief recreation.

Most importantly, Griffith had continued with his translations of Dante. In 1908 Angus and Robertson, publishers to the University, brought out his edition of the Inferno, with an acknowledgment in the introduction to C. J. Brennan, “for his valuable criticisms and suggestions”. He sent copies to various literary figures, with some of whom he was a close correspondent, such as Frances Winter of New Guinea, and Poultney Bigelow of New York. He still wrote to Barbara Baynton occasionally, and visited her in 1908. Perhaps there was a link between Dante’s underworld and her terrifying bush?

Undoubtedly the work of translation was an intellectual form of escape for Griffith. Less complicated releases came through his regular walking, which helped compensate for the loss of his customary excursions to Moreton Bay — though whenever in Brisbane he tried to arrange a visit. In November 1904 he sailed to Redcliffe in the Emerald; in April 1906 he
went up the river in a launch; in April 1907 to the pile-light in the *Midge*; and in October 1907 to the opening of the yachting season in Welsby’s launch. In Sydney he watched regattas with members of the Royal Yacht Squadron, and was in the umpire’s boat for interstate racing in May 1905. He watched cricket matches — legal, interstate and international. He became a regular at the Royal Easter Show in Sydney, as well as attending the Brisbane ‘Ekka’ and agricultural shows in other capitals.

As the leading representative of the judiciary, which he always insisted must be separate from the legislature and the executive, Griffith should, in theory, have been isolated from political questions. But after his long, active years in Queensland and Australian politics he could not always refrain from intervening.

The commonwealth order of precedence was important to him: it placed the chief justice in the sixth class. Griffith used his precedence both as a privy councillor and chief justice in intervening at the top of the imported executive level, with governor-generals and governors. Quiet walks in Government House gardens often included political discussion. Sometimes he was reminded of past struggles, as in July 1907 when the Racecourse Central Sugar Mill of Mackay informed him that the mill “formed under your good graces by grants made by your government in 1884 has now paid the whole of its indebtedness to the Treasury”.

He enjoyed the social precedence given by his new office: thus at Melbourne University Commemoration:

> they gave me a front seat besides Lady Wrixon, the wife of the Vice-Chancellor. I did not speak to Sir John Madden or Lord Northcote. I saw Lady Forrest — Lady McEachern and Lady Clark who were sitting just behind me, and after the function I went with Mr Deakin to tea at one of the Professor’s houses.

(He was amused to note in his postscript that both Melbourne papers wrongly reported that “Lady G and Miss G. were with me at the University on Saturday.”)

The roll of governors was small, and most were acquaintances of Griffith. More important were Griffith’s links with successive governor-general, who often sought his advice even beyond the strict limits of constitutional propriety. Griffith, when acting governor of Queensland, had been a thorn in the side of Hopetoun, and as chief justice was to continue his intervention as revealed by surviving correspondence with Hopetoun’s successors — Tennyson (1902–1904) and Northcote (1904–1908).

Tennyson, ex-governor of South Australia, who had sworn in Griffith on 5–6 October 1903, had supported his appointment and sympathised with his sacrifice of pension rights. Tennyson’s term, however, ended soon after Griffith became chief justice. His successor, Northcote, began the custom of using Griffith, as chief justice, as the governor-general’s deputy. Griffith had sworn in Northcote on 26 January 1904.

Northcote governed in a period of very poor relations between the Colonial Office and the Australian government, particularly with Deakin. Griffith was very conscious of the strains, through his contacts with Northcote as well as such politicians as Deakin, with whom he discussed the judiciary bill amendment. After his experience in Queensland, he was particularly aware of the difficulties between governor-general and state
governors. The garden party he held on 5 July 1904 at "Merthyr" helped heal a breach between Northcote and Queensland's governor, Chermside. The Northcotes sent a wedding anniversary present to the Griffiths, after he had "casually mentioned" the date (the fifth was their thirty fourth anniversary) to the aide-de-camp, Lord Richard Nevill.115

The Northcotes and Griffiths exchanged Christmas greetings later that year, Northcote consulting Griffith as to which charities he should support in Brisbane. Griffith was also on good terms with the governor's wife, Alice. She sent him a book The Conqueror "to pass a few hours while travelling" in 1906; thanked him for copies of Dante in 1907; sent him three French books in 1908.116

Northcote appointed Griffith his deputy to open parliament in 1907. In November of that year, when Higgins offered to mediate in a miners' strike on the Newcastle and South Maitland fields, Griffith agreed to postpone all Higgins's High Court work, "in order to assist the Government and country". Griffith insisted, however, that Higgins's offer be kept secret until "all the parties are first consulted and consent". Eventually C. G. Heydon of the New South Wales arbitration court was appointed to head a special mining tribunal.117

Northcote, closer to Australia than the Colonial Office, had no fear as to the stability of federation, even if this was simply because "people won't take the trouble to undo it". Its opponents, he believed, were chiefly state judges, ministers and parliamentarians whose importance had been diminished by the supreme position of the High Court and the federal parliament. He was sympathetic with Griffith's approach to the commonwealth and states-rights problem, commenting in 1908 on the decision that effectively blocked the federal Labor party from "fixing the rate of wages in every State. It is a decision which I, personally, agree with in favour of the States against the Commonwealth".118
By 1908 Griffith had won acceptance of the High Court from free trade and protectionist governments, the state courts and the Privy Council. Yet he was aware that further challenges could be expected from both within the court and outside, particularly from those seeking greater powers for the commonwealth.

Not all the High Court decisions had been in favour of states-rights. For instance in 1908, Griffith and four other judges had agreed in the *Sutton* case that the commonwealth had exclusive power over customs, applying sections 52(ii), 86 and 90. The government of New South Wales claimed that wire-netting it had imported should be free of customs duty as being the property of the Crown. Griffith disagreed: the Crown could be bound only if a statute so intended. The limits of authority of the governments of Australian states were not merely geographical but also constitutional: in "many matters . . . the Commonwealth Government has exclusive authority, and the State Governments have no concern whatever. The Crown, as the head of the Commonwealth Government, is for many, if not all, purposes a separate juristic person from the Crown as head of a State Government".

In the *Barger* case, heard in June 1908, the High Court ruled (Higgins and Isaacs dissenting) that the Commonwealth 1906 Excise Tariff Act went beyond the government's powers. Griffith, delivering the judgment for himself, Barton and O'Connor, stated that his decision was based on construing the constitution:

> Whether it is in the best interests of the Commonwealth that the Federal Parliament should have the powers contended for, or whether those interests would be best furthered by the exercise of the powers reserved to the States, are matters with which this Court has no concern. Our duty is to declare the law as we find it, not to make new law.

The court had to seek for the substance, rather than the literal form, of the act, and in deciding this, the motive and the ultimate end desired by the legislature were irrelevant. Griffith declared that the act, although literally imposing duties of excise, was in substance regulating the conditions of
manufacter of agricultural implements. As such it did not fall within the taxation powers conferred by the constitution on the commonwealth. It was clearly within the competence of a state legislature to regulate the conditions of labour for those employed in the manufacture of agricultural implements. Griffith also held, applying sections 51(ii) and 99 that the act would also have been invalid on the ground that it discriminated between states and parts of states.

This decision in effect defeated Deakin's "New Protection" legislation and led to attacks on both the assenting and dissenting judges. Thus Higgins, who was criticised in the press (particularly the Melbourne Argus), appealed to Deakin, pointing out "the indecorum of attacking a judge who cannot well defend himself".3

The judges were similarly divided in the 1908 Brewery Employes Union case.4 The question was whether a 1905 commonwealth act relating to workers' trade marks was within its competency. Griffith repeated his belief that the court's duty was limited to an examination of the Constitution and a declaration of its meaning. It would indeed be a lamentable thing if this court should allow itself to be guided in the interpretation of the Constitution by its own notions of what it is expedient that the Constitution should contain or the Parliament should enact.

Griffith pointed out the limitations on section 51: the power of the federal parliament did not extend to trade and commerce within a state. He believed section 107 could be interpreted to reserve the power to legislate on internal trade and commerce to the states. The central question was whether this act was covered by the term "trade marks". Terms, Griffith held, must be defined by their signification in 1900, subject to new developments (and he gave the example of wireless telegraphy). He decided that the term in 1900 did not denote every kind of mark which might be used in trade . . . but meant a mark which is the visible symbol of a particular kind of incorporeal or industrial property consisting in the right of a person engaged in trade to distinguish by a special mark goods . . . from the goods of other persons.

In his view, the workers' trade mark did not conform to the concept intended in the constitution.

The political result was the failure of Deakin's government, supported by the Labor party, to provide for a mark to indicate that goods produced in intra-state industry were produced by trade union labour. Griffith was praised by the state press: the Sydney Morning Herald saw the "High Court . . . doing . . . fine service . . . as a bulwark against the encroachments of the unificationists", and the Brisbane Courier described his judgment "as keen as the edge of a Damascene sword". Deakin told his political ally, Fisher, that the High Court decisions were "very regrettable".5

In June 1909, with Isaacs dissenting, the other four judges held in the Huddart Parker case that parts of the 1906 Australian Industries Preservation Act were beyond the powers of the commonwealth government.6 Griffith argued that the commonwealth parliament did not have power to create corporations; its power was limited to legislation affecting foreign corporations, and trading and financial corporations created by state law.
The court in 1909 decided in Baxter v Ah Way that it was within the power of the commonwealth parliament to pass a general section of the Customs Act and for the governor-general to use that section to make a specific proclamation prohibiting the importation of opium fit for smoking. All four judges saw the prohibition as an act of the parliament itself, not as a delegation of legislative power.

Griffith's judgment began with a review of historical arguments, from an 1878 case where it had been held that the Indian parliament was not a delegate of the Imperial parliament. He concluded:

It is too late in the day to say that the legislature cannot create, for instance, a municipal authority and give it power to make by-laws, or create a public authority.

Neither, in his view, was it to the purpose to say that the legislature could have done the thing itself:

It is too late in the day to contend that such a delegation, if it is a delegation, is objectionable in any sense.

Griffith also referred to decisions in the United States of America, beginning with Marshall's in 1825.

He then used textual arguments: the powers of the parliament were conferred by section 51 (rather than section 1) and in their ambit they are unlimited. Hence there was no objection to a conditional law being passed ... unless the legislature is prepared to lay down ... for all time ... a list of prohibited goods, they must have power to make a prohibition depending on a condition ... The expediency ... at a particular time ... [or] Whether it is desirable or reasonable that goods ... should be excluded is another question of fact ... and the Governor in Council is the authority appointed to ascertain and declare the fact.

Griffith concluded by reverting to the historical fact of delegation — if it upheld the objection, the High Court "would be casting doubt upon the validity of a long course of legislation in Australia".

In December 1910, the validity of the 1909 Seamen's Compensation Act was considered in S.S. Kalibia v. Wilson. The respondent shipped at Sydney as a seaman for the voyage to and from Brisbane, but was injured in an accident and discharged when the ship reached Brisbane. The seaman was liable for compensation if the vessel were engaged on interstate trade. It had been chartered to carry cargo from New York to Adelaide, Melbourne, Sydney and Brisbane. While at Adelaide, the chief officer was given a small package, inadvertently left behind by another ship, to take to Brisbane. The package was not entered in the manifest, no bill of lading was signed, and no charge was made. Griffith held that "a ship cannot become engaged in the coasting trade or any other trade without the knowledge and volition of the owner or some person for whose acts he is responsible".

The particular issue settled, Griffith went on to consider the overall validity of the act. He refused to rule on whether the act came under the trade and commerce power of the commonwealth — an abstract question — but examined whether the federal parliament could validly legislate on trade within a state, which was expressly included. He concluded it was "not now open to argument in this Court" that the trade and commerce power
authorised parliament to legislate over the internal trade of a state. Nor did he believe that this invalid section concerning intrastate trade could be separated from the rest of the act. The majority of the High Court judges agreed with Griffith, although Higgins believed that the act was valid as to seamen inside its power, arguing that the valid could be separated from the invalid.

Griffith was with the majority (Barton, O'Connor and Isaacs), Higgins dissenting, in the Osborne case, decided in May 1911. The court held that the 1910 Land Tax Assessment Act was not contrary to section 55 of the constitution, as it dealt only with the imposition of taxation, and with only one subject of taxation. Griffith denied that the real purpose of the taxation was "not so much to raise revenue as to prevent the holding of large quantities of land by a single person", even if this may have been an indirect consequence contemplated and desired by the legislature. The Osborne case was an exception to the generally narrow construing of commonwealth powers.

The High Court decided in the same month in the Chaplin case that the commonwealth parliament could make commonwealth salaries subject to state taxation. Governments could waive the protection of the immunity of instrumentalities doctrine by converting that doctrine to a matter of degree and adjustment, as in the United States. Thus Griffith in his judgment referred to his earlier dictum in Baxter's case that the federal government could make its grants subject to a tax, and then continued: it is a doctrine "admittedly based upon that laid down by the Supreme Court of the United States in the great case of McCulloch v Maryland. That principle, however, has always been understood in the United States to be subject to qualification". After reviewing cases in which limitations had been specified, Griffith concluded that the earlier dictum was "sound law and part of the law of the Commonwealth".

A most important issue reached the High Court in 1912. The 1906 Australian Industries Preservation Act made it an offence to enter a contract with intent to restrain trade or commerce to the detriment of the public. The issue was whether the vend agreement between shipowners and proprietors of coal mines in the Newcastle-Maitland area was contrary to the act. After examining the "vast mass of evidence", Griffith found "no real dispute as to the actual facts. The conflict is as to the proper inference to be drawn from them". His inference was in favour of the vend.

He accepted that in 1906, when the agreement was made,

all parties honestly believed — and believed on grounds which were not only reasonable but very substantial — that the prosperity of the Newcastle and Maitland Districts was in danger, as well as their individual interests, by reason of the excessive competition and unremunerative prices obtained for coal. Whether they were right or wrong in this belief is immaterial.

He found the vend agreement "a lawful and even laudable transaction, which . . . did operate to the advantage and not to be detriment of the public at large". He admitted it would be absurd to attribute to the members of the Vend purely altruistic motives, but a desire to promote a legitimate enterprise from which you desire to obtain pecuniary advantage is not incompatible with an absence of desire to injure the public.
The intention was to put the Newcastle coal trade on a satisfactory basis so that adequate wages could be paid and a reasonable selling price be set "without running the risk of being underbid by other competitors in Australia or abroad".

He also found that the shipowners' agreement was not "obviously unreasonable as regards the interests . . . of the public. It is not therefore in our judgment unlawful on its face".\(^{11}\)

The commonwealth crown solicitor, Powers, who had sat in the Sydney High Court throughout the hearing and kept the head of the Attorney-General's Department in Melbourne informed of the proceedings, was sure Griffith was prejudiced. Certainly his remarks from the bench were acerbic, as illustrated by one of his interruptions of the barristers Wise and Starke: "we are not persons who know nothing whatever about human affairs — we are not altogether bookworms. To tell me that wages is the only element in the cost of production is an insult to my intelligence".\(^{12}\)

The Privy Council in July 1913 affirmed the High Court's decision, finding insufficient evidence of intent by the vend to act to the detriment of the public.\(^{13}\)

In a case related to the vend, Griffith was in the majority upholding an appeal from a conviction for refusing to answer certain questions framed under a section of the 1906 Australian Industries Preservation Act. Griffith argued that, after the previous prosecution, the power given by the section was exhausted so far as the persons whom the attorney-general alleged to have committed the offence were concerned, whether they had been made parties to the suit or not. Griffith was disturbed at the suggestion that this objection could be overcome by a technicality (the argument that this ruling did not apply when the object was to start a fresh suit or to make the company defendants to an existing suit):

I cannot refrain from expressing my suspicion that it should be taken on behalf of the Crown. It used to be regarded as axiomatic that the Crown never takes technical points, even in civil proceedings, and a fortiori not in criminal proceedings.

I am sometimes inclined to think that in some parts — not all — of the Commonwealth, the old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken.\(^{14}\)

Naturally his remarks disturbed the crown solicitor Powers, who hastened to assure both W. M. Hughes (the attorney-general) and Garran that "his instructions to Counsel in every case have been not to take purely technical points and to disclose to the Court every circumstance in favour of a Defendant".

Powers believed Griffith was wrong; the objections were "not technical in the generally understood use of the word", and he doubted whether Barton would have believed these were technical, and was sure Isaacs would not have.\(^{15}\)

Not surprisingly, Griffith's conclusions in the vend cases were challenged, especially after his views won support in London. He was seen by Labor spokesmen as being the tool of the capitalists, and passions ran high outside the court. Hughes declared "the Vend was being prosecuted . . .
because it had been exploiting the people of Australia". Griffith maintained that the law was neutral, and that his judgment had been based on an objective analysis of the evidence.

The Colonial Sugar Refinery Company case, like the vend case, had considerable political overtones. In October 1911 a royal commission was appointed by the Fisher Labor government to investigate the sugar industry in Australia. When the general manager of Colonial Sugar Refinery Co. Ltd. was summoned to give evidence and to produce documents, he refused to do so, claiming either that the Royal Commissions Act was invalid, or that this commission included matters over which the federal government had no legislative power.

Griffith, on the precedent of a 1911 English case (Dyson v Attorney-General), decided in October 1912 that the High Court had the power to declare the act invalid. The penalties were greater in this Australian case (the manager being liable to £500 for his first refusal and at least £500 for each subsequent refusal), but Griffith saw no "distinction in principle between the liability of hundreds of persons to a single penalty and the liability of one person to hundreds of penalties". He argued that the arm of the court would be very short if it could not protect a person: "as well", he proclaimed, reflecting his Dante, "tell a man who is threatened with the bastinado that he must wait and bring his action for damages after the disciplinary power has been exercised".

Griffith could not, however, find the act invalid: it had long been British practice to make such inquiries:

The collection of information . . . may be necessary for the good government of the country . . . . It follows that a compulsory law to provide for its collection is "incidental" . . . to the execution of the powers of Government.

He perceived dangers: an amendment of the constitution might bring any matter within the federal area, whereupon an enforced inquiry into any subject could be argued to be incidental to the exercise of federal powers. For instance, if section 116 of the constitution guaranteeing freedom of religion was repealed, the federal executive could "appoint a Royal Commission to investigate the tenets of any religious body in the Commonwealth, its assets, the administration of its revenue, and the internal management of its institutions". He found the idea of such an inquisition unthinkable, though he acknowledged it was difficult to formulate a general rule to set the bounds for legitimate royal commissions, other than that the "connection between the particular question and the issue . . . must not be too remote".

In this case, Griffith concluded that an injunction should be granted restraining the commission from requiring the manager to answer any question or produce any document that could not be shown to be relevant.

Barton largely agreed with Griffith, but Higgins and Isaacs were diametrically opposed. The court being evenly divided, a certificate under section 74 to appeal to the Privy Council was granted. Its judgment of December 1913, delivered by Viscount Haldane, went further than Griffith's: it held that the Royal Commissions Act was beyond the powers of the commonwealth parliament and void so far as it purported to compel answers to questions, order the production of documents, or otherwise to enforce compliance by members of the public.
Griffith and Barton were accused, outside the court, of protecting a capitalist from investigation, especially as the unchecked power of the Colonial Sugar Refinery Company was claimed to be detrimental to workers in the sugar industry. Again Griffith claimed that his judgment was not political, but legal, based on a direct interpretation of the constitution and the application of a British case.

Another section of the constitution, 116, which had been referred to incidentally in the royal commission case, was made central in Krygger v Williams (October 1912). Compulsory military training for all males aged between fourteen and eighteen began on 1 January 1911. Krygger refused service, claiming that all military training was "opposed to the will of God" revealed by the Scriptures, as were gambling or racing. Griffith was adamant that the constitutional objection entirely failed: section 116 provided that the commonwealth could not make any law prohibiting the free exercise of any religion, and he interpreted this narrowly to mean:

prohibiting the . . . doing of acts which are done in the practise of religion. To require a man to do a thing which has nothing at all to do with religion is not prohibiting him from a free exercise of religion. It may be that a law requiring a man to do an act which his religion forbids would be objectionable on moral grounds, but it does not come within the prohibition of section 116.

He could not find any clause in the Defence Act justifying Krygger's refusal. The act provided that those forbidden to bear arms by their religion should, as far as possible, be allotted to noncombatant duties but, ruled Griffith, "they must attend to be trained".

Griffith made his beliefs clear: "No one can doubt that the defence of his country is almost, if not quite, the first duty of a citizen, and there is no room for doubt that the legislature has power to enact laws to provide for making citizens competent for that duty". He cited service in the ambulance corps — saving rather than taking life — concluding that "to base a refusal to be trained in non-combatant duties upon conscientious grounds is absurd". Sawyer's comments, repeated by John Barrett, that Griffith "contemptuously dismissed the plea" ignores this argument about non-combatant duties, although undoubtedly Griffith, supported by Barton, interpreted section 116 narrowly.18

Relationships among the original three judges had strengthened. Griffith and Barton had become close friends: when Barton told Griffith of the engagement of his daughter, Griffith "showed as much satisfaction as I have known him to do about anything, for all that he has a bad cold, poor chap".19 O'Connor had also come close: by 1912, while on leave, he addressed Griffith as "my dear Chief" and sent personal greetings to Lady Griffith and their grandchildren. O'Connor took overseas leave from December 1911 to August 1912 to recuperate from a heart attack, but was hospitalised by October (Griffith visited him in St Vincent's, Sydney). It was a bitter blow to Griffith when he died on 19 November.20

In contrast, Griffith's relationship with Isaacs and Higgins continued to worsen. By June 1911 he had confided his concern to Lucinda Musgrave, who sympathised: "your colleagues on the Supreme Bench! How hard to work with them".21

Griffith and Isaacs were never close. They rarely visited each other's
home, although forced together on circuits. Their clashes on the bench were "exceedingly fierce ... delight[ing] the law students, if they scandalized the public". Higgins was closer to Griffith, despite his sharing Isaacs's view of the constitution, and resenting particularly Griffith’s attempts to limit the commonwealth’s conciliation and arbitration power. They visited each other’s homes and exchanged letters.

Griffith was apparently not consulted when new appointments were planned in 1913. These were expected to be far more political, because of the Fisher Labor government’s frustration since 1910 with the High Court’s state-rights line. A. B. Piddington accepted appointment, but resigned before swearing-in, convinced that he had compromised himself by assuring the attorney-general, Hughes, in a cable that he was "in sympathy with supremacy of Commonwealth powers".

"As you know Piddington rushed the press", Hughes told Fisher, and he went on,

his explanation was lame in the extreme ...  
I told him what I thought of him. He did not like it ...

Frazer [postmaster-general in the Fisher cabinet] is to see Isaacs J. casually. I am of course not in any way involved. Naturally his view is not conclusive. But it may be useful.

Griffith saw Piddington on 4 and 25 March, recording on the second occasion, "reasons for resigning office of J. of H.C. before being sworn". Piddington regretted the decision, telling Griffith, "I cannot tell you how I had looked forward to sitting with you as my chief or with what regret I part with the opportunity of learning how to discharge great duties under such a master".

Hughes appointed the fifty-year-old Gavan Duffy, a senior member of the Victorian bar who had appeared for the commonwealth in the recent sugar case. The offer to the commonwealth crown solicitor, Charles Powers, was more contentious. Although he had been admitted as a barrister, he had practised as a solicitor, and the Queensland bar had "expressed a wish that ... [Powers] should not be congratulated". Queensland’s judge, Pope Cooper, saw the new appointments as a "detestable" attempt by the government to degrade the High Court. A fifty-year-old Sydney judge, George Rich, a "lawyer’s lawyer with no interest in politics", was the other appointment.

In conciliation and arbitration matters after 1908, the High Court judges continued to clash. For instance Griffith, with O'Connor and Isaacs, held in a 1909 case that an award made by Higgins was partly in excess of his court’s jurisdiction. Higgins had accepted the argument of unionists employed by Broken Hill Proprietary Company that, as their employer intended to reduce wages in both New South Wales (Broken Hill) and South Australia (Port Pirie), the commonwealth court could make an order. Griffith believed Higgins had gone beyond the limits of the dispute to make an order to facilitate "amicable relations between the employers and employees in future". After examining whether the men of Broken Hill and Port Pirie had made common cause before the proceedings, and whether the company understood they were parties to an interstate dispute, Griffith decided the dispute extended beyond the limits of one state,
and that, despite a strike, the relation of employer and employee had not ceased. He held, however, that the commonwealth court had no jurisdiction to make an award on matters not submitted to the court but introduced by Higgins:

I cannot assent to that assertion of power . . . the President [is empowered] to deal with all matters incidental and ancillary, provided they are within the ambit of the dispute submitted to him. But the Court cannot of its own motion give directions in a matter not substantially involved in or connected with the disputes submitted to it."

Later in the year, the High Court was divided in considering a dispute in the timber trade. A common "log" of wages and conditions of labour was being sought in five states, and in Western Australia a 15 per cent higher rate of wages. Griffith complained that many of the questions submitted were irrelevant: the arbitration act was "not intended to allow the submission of hypothetical or abstract questions of law".

He reviewed the meaning of "industrial dispute", building on his tentative definition in earlier cases. He distinguished the judicial from other spheres:

We are not concerned with the political question, now hotly debated, whether it is desirable that the Federal Parliament should have paramount authority to determine all conditions of employment in the Commonwealth. Our duty is to interpret the Constitution as it stands, not according to any preconceived notions as to what it ought to be".

Griffith found difficulties in seeing it as a single industrial dispute, being unable, without affecting an ignorance of Australian geography and Australian conditions which I do not enjoy, to pretend to think that the employees, say, in Queensland can have any such community of interest with the employees in Western Australia as to make the demand for an extra 15 per cent of wages in the latter State an identical matter of dispute in both States.

Eventually, however, he granted that the arbitration court could meet the Western Australian demand, if a common dispute existed.

He decided, too, that the arbitration court could make an award covering different operations of the timber industry, even if some of these were not carried on in all the states, so long as the one dispute connected them all.

Griffith (together with the other three judges) ruled that the commonwealth court had power to make an award even if it were inconsistent with that of a state arbitration court or with an industrial agreement made under a state act, or enforceable by state law. The High Court was split (2–2) on whether the commonwealth court had power to make an award inconsistent with a determination of a state wages board. Griffith's opinion, as chief justice, with O'Connor's concurrence, prevailed: the court did not have this power. Griffith argued that the wages boards were "subordinate legislative bodies duly constituted by . . . [state] law".

In his conclusion, Griffith referred again to his unease in acting within this whole new province of law:

I am conscious that this opinion partakes more of the character of an essay or treatise than of a judicial pronouncement, and I entertain some doubts whether I am performing a judicial duty in delivering it. I should not like it to be regarded
as a precedent, but on the whole I think I should let it go forth for what it is worth.37

His doubts were to be multiplied in succeeding years, as Higgins increased his efforts to widen the areas covered by his court.

Griffith in 1910 in the Bootmakers' case [Whybrow's] reaffirmed his view in the Woodworkers' case that the commonwealth court could not make an award inconsistent with that of a state wages board. The limits of the commonwealth court's authority were established by the commonwealth parliament, and Griffith found it "extraordinary" that a federal arbitrator believed he needed more power to settle a dispute to his satisfaction:

the notion of any one person or set of persons being set up in a civilized country with authority to supersede or abrogate any law of which he does not approve is to me so extraordinary that I can hardly conceive of any legislature in full possession of its faculties setting up such an institution.

The notion that a commonwealth law was paramount was contrary to Griffith's view of the constitution.

Griffith's view was accepted by Barton and O'Connor, and opposed by Isaacs and Higgins. All judges, however, agreed that the specific award being considered was not inconsistent with state awards. Both could be complied with: a higher rate of wages could be fixed by the commonwealth court; it could impose conditions different from those under the state awards.38

On 20 June 1910, the boot manufacturers applied for a prohibition to restrain the commonwealth arbitration court from further proceedings. Griffith's suspicion of the power of the new court was suggested in his exchange with a barrister, whom he asked: "do you mean to say that if the Federal Arbitration Court sentenced a man to be hanged there would be no remedy?", to which the reply was "that is so".39

Eventually, after fifteen sitting days, Griffith (with Barton and O'Connor concurring) held that the High Court had jurisdiction to issue prohibition to the commonwealth arbitration court either under the constitution (section 75) or the Judiciary Act (section 33). Isaacs differed, believing that prohibition required appellate, not original, jurisdiction, and did not therefore fall within section 75. He agreed, however, that the High Court had jurisdiction under section 31 of the 1904 Commonwealth Conciliation and Arbitration Act. The validity of this act had again been challenged in this case, and all judges held it was not as a whole ultra vires the constitution. Griffith applied a test to sever the valid parts from the invalid. He argued that the arbitration court's valid power was limited to judicial determination between the parties to a dispute, not to the regulation of industry in general.

On the facts, Griffith agreed with Higgins's finding: two of the twenty-three claims of the Boot Trades Employees' Federation "represented a real dispute then existing" [one for an increase of wages, the other for regulating boy labour], and the awards made by the court on these claims were within its jurisdiction.40

The third hearing of Whybrow's case was in Melbourne in September–October 1910, when all five judges agreed that the provisions of the 1904 act purporting to authorise the commonwealth court to declare
The Established High Court 299

a common rule for an industry and to declare that it would be binding on all persons engaged in that industry, were _ultra vires_ and invalid. Griffith reiterated his arguments in previous cases that such a common rule was neither arbitration nor conciliation:

The only means by which the relations of persons lawfully associated in harmony can be lawfully affected are mutual agreement and legislative enactment. Where an authority is empowered to prescribe general rules for the governance of the community or any part of it the power so conferred is in its essence legislative.

All judges agreed that the award could not be extended to cover parties not before the court.31

In 1911 in a _Broken Hill Proprietary_ case, Griffith was in the majority with Barton and Isaacs (O’Connor and Higgins dissenting) in limiting the definition of an “industry”. Under the 1904 act, it could not be extended to include all persons doing a particular kind of work. Hence it excluded the applicant association of engine-drivers and firemen, whose members were employed indiscriminately in mines, timber-yards, tanneries, soap and candle works. Griffith reiterated his belief that the arbitration court had no legislative authority: its functions are to settle actual disputes between actual employers or groups of employers on one hand and employés on the other, and then only when the dispute extends beyond one State. Nor in my opinion was the Act . . . designed to facilitate the manufacture of disputes for the purpose of bringing them before a federal tribunal. On the contrary, it was designed, however it has been sought to be applied, to promote industrial peace.32

No formal application was made to end the proceedings, which were to be reviewed in 1912.

Griffith limited the meaning of “factory” work in a case he heard in Melbourne in October 1912. He, with Barton, agreed that a Chinese laundry was a factory under the 1905 Victorian Factories and Shops Act, which forbade any work before 7.30 a.m. and after 5.30 p.m. in a factory that employed any Chinese. During the prohibited hours, a lodger (not an employee) ironed his own shirt — was this an offence? Griffith solemnly pronounced: “I do not think that for a man to wash his own clothes is factory work at all . . . although the business of the factory is to wash clothes”.33

In December 1912 in the _Steamships’_ case Griffith, with Barton and opposed by Isaacs, again limited the commonwealth court’s jurisdiction. Higgins had made an award in April 1912 prescribing minimum wages for masters and navigating officers. Just before the seamen’s Merchant Guild’s award in New South Wales was due to expire, it had sent a letter to eighty-three representatives of the shipping industry requesting that within fifteen days they agree to specified terms and conditions of employment. If agreement were not reached, a plaint was to be made to the commonwealth arbitration court. Griffith believed the time given was “absurdly inadequate. The letter can only be regarded as an ultimatum”. And he did not believe that it created an interstate industrial dispute after the fifteen days.

Griffith decided that an industrial dispute extending beyond the limits of any one state could not “be constituted _ex mero motu_ by any two groups
of employés in different States combining to make a joint identical demand upon their respective employers". He based this on interpreting the constitution:

neither to strain its language to a construction which the Court may think more beneficial than that which the words express, nor to vary its construction from time to time to meet the supposed changing breezes of popular opinion.

He emphasised his states-rights stance: "so often pointed out from this Bench, that by the Constitution the control of domestic trade and industry is reserved to the States except so far as it is taken away by express words or necessary implication".

In Griffith's view, the constitution was not designed to interfere with the domestic affairs of the states or to foment industrial war, but "to prevent or compose disturbances of industrial peace likely to affect the whole Commonwealth ... without subjecting the whole of the industrial affairs of the Commonwealth to a federal tribunal at the will of any one party".

Griffith had again made clear his lack of sympathy with the extension of this new province of law:

it is no light thing for an employer who, so far as he knows, is carrying on his business in perfect amity with his employés to find himself suddenly, and without any opportunity of redressing grievances of which he has never heard, involved in a suit before the Commonwealth Court of Arbitration which may ... last for an indefinite time, in which his interests are different from those of his co-defendants, with whom he has indeed nothing in common except that he is engaged in a similar trade in Australia."

In March 1912, the second hearing of the Broken Hill Proprietary case began in Melbourne. It was eventually concluded a year later in Sydney, with the bench evenly divided (2–2). Griffith argued that the majority view in the first hearing against the applicant association bound the parties and the president of the commonwealth court of arbitration — it "is a direction which it is unthinkable that he can disobey".

Higgins had been asked by the same association to proceed in the claim after the commonwealth parliament, on 23 November 1911, amended the 1904 act to make associations of employees in any "handicraft" registerable as organisations, and to allow validation of previous registrations. Higgins now asked the High Court whether he had the power to make an award.

Griffith held that the changes in the act did not give retroactive rights of suit. He applied a 1912 Privy Council decision:

In the absence of appeal the judgement was a final determination of the rights of the parties, and the ordinary principle that a man is not to be vexed twice for the same alleged cause of action applies, unless it be excluded by the legislature in explicit and unmistakeable terms.

He pointed out some of the difficulties if judicial proceedings that were wholly null and void could be retrospectively validated — for instance, witnesses who had given false evidence in the void proceedings would become retrospectively liable to prosecution for perjury.

He agreed, however, that as from 23 November 1911 the plaint became valid. He ruled that there could be a fresh (not a further) hearing, and that
the president could avail himself of all the evidence he had already heard. Higgins was joined by Isaacs in dissenting from Griffith (whose view was supported by Barton and hence prevailed). Griffith left for England two days after delivering his judgment, and his correspondence with Barton reveals some of the continued divisions between the judges. One letter suggested Isaacs was plotting in the hope of becoming chief justice; another bitterly attacked Isaacs, this time for certain judgments, adding, "I don't think there is the least bit of sincerity in the Jew boy's attitude". Later Barton said he, Duffy and Rich were going to Perth "and when the malign influence [presumably Isaacs] is not there too, business gets along fairly well". He assessed the new judges: Duffy "honest", Rich "follows him in all things", and Powers "behaving more satisfactorily than either". Of Higgins, he wrote, he completes "his seven years of 'stirring of peace' in 1914, and while opinions will vary as to the quality of his work in that field [arbitration], there can be no doubt of its quantity".

Barton, anticipating that Whybrow's case would be overthrown, described Isaacs's "jaws slavering for devouring of some decision of ours". He was relieved when Powers sided with him: "we have pulled through the principal peril". Griffith replied: "I mentioned Isaacs' suggestion that Higgins should sit to hear a Prohibition argument against himself to two or 3 of the Lords of the [Privy] Council, who thought it so preposterous as to be almost incredible". MacGregor blamed partisanship, telling Griffith I am not surprised that you found discordant tendencies in your team. I fear that in a certain type of men in Aust. there is a disposition — it may be sub-conscious — to carry party politics to the Bench. I have for some time regarded that as a real danger to Australia.

Apart from the contentious constitutional and arbitration cases, there was little evidence of partisanship on the High Court bench. It was more liable to clash with other courts, such as the Privy Council. One disagreement arose in a case involving the interpretation of statutes. The New South Wales 1884 Civil Service Act provided that if a public servant were sacked because his post was abolished, and no other office could be offered, the officer could receive superannuation. The 1895 Public Service Act provided that if sacking followed an investigation, a gratuity was payable. An accountant in bankruptcy was sacked in 1896 after a Public Service Board investigation. The state Supreme Court found that he was not entitled to superannuation, but this decision was reversed by the High Court. Griffith saw the case as entirely one of fact, not involving any general principle; as the office had been abolished, the appellant was entitled to a pension from the date of dismissal. His right arose from the 1884 statute, and his taking advantage of the 1895 act to obtain a gratuity and a pension at a reduced rate could not defeat his other statutory claim, although he must give credit for the amounts received. The Privy Council, in a judgment delivered on 31 March 1909 by Lord Macnaghten, disagreed. It held that the public servant was excluded from any compensation other than that provided by the 1895 act. The Privy Council relied on sections of the act that had not been considered by the High Court, and on 27 May 1909 Griffith made a caustic statement on behalf of the three judges.
Griffith noted that the Privy Council had used new grounds in three of the four cases in which it had reversed the High Court’s judgments: “In the present case the statutory provisions upon which their Lordships apparently rely were not brought to our notice, and we are to this day not aware of their existence”. He warned of the danger of allowing new points to be raised on appeals.

The High Court clashed with the Victorian Supreme Court and the Privy Council in a protracted probate litigation. In October 1909 a divided High Court (Griffith and O’Connor against Isaacs and Higgins) reversed a decision of the Victorian Supreme Court. The issue was whether the trustees, who were also the executors of the two wills, had carried out their stated intentions. The appellant, who was entitled to a life interest under one will (of his aunt’s father), and large benefits under the other (of his aunt), claimed a declaration of rights. The nephew alleged that a reduction in payment to him had been improper and unreasonable, and an unfair exercise of the powers and discretion of the trustees. As well he claimed that payments of an annuity had been made out of income and not out of capital, whereby his interest in the estate had been diminished.

Griffith and O’Connor held that the nephew was entitled to bring the case against the trustees and was entitled to specific relief in the form of increased income. On the evidence, the trustees had not properly exercised their discretion; they were bound to exercise every year an independent individual discretion as well as a joint discretion as to payments of maintenance falling equally on the son and daughter. Griffith and O’Connor also gave their opinion, sed quaere, that the equitable doctrine of contribution might apply to the two estates in respect of the maintenance of a sister. Isaacs and Higgins dissented, seeing no actionable grievance for which the nephew could sue the trustees. Griffith was convinced otherwise, his judgment including a strong condemnation of the trustees:

it is suggested that trustees ought to have sole regard to their own beneficiaries, and to endeavour to do their best for them regardless of the rights of others . . .
If this is the doctrine of the Court of Chancery, I should be induced to agree with James V.C. [when he was asked to strain a doctrine of the Court so as to work a fraud], to wish, if the argument were sound, that there was a Court of Equity for the purpose of correcting the dealings of the Court of Chancery. Honesty and fair dealing are the basis of equitable doctrines . . . I think that the real question to be decided in such a case is what is honest and fair.

He also showed his customary suspicion of over-strict legalism:

With regard to amendment it would be a shocking thing if a beneficiary entitled to relief against his trustees should be finally excluded from it by a slip in pleading . . . And I am still as surprised as I was during the argument at the strenuous opposition made by the trustees to the plaintiff getting what he is entitled to, whatever that may be.

The main matter reached the Privy Council in February 1911. It reversed the decision of the High Court and restored the decision of the Victorian Supreme Court. Lord Mersey read the judgment (for five of the law lords), which held that, on the evidence, the trustees had honestly exercised their discretion. Further, the council held that the doctrine of equitable contribution did not apply, as there was no common obligation on the trustees.
of the two wills to contribute to the maintenance of one of the beneficiaries. Judgment was therefore properly given for the defendants. In December 1911, when the issue once again reached the High Court, Griffith had his opportunity to comment on the Privy Council's judgment. He described some features of the case as being "unique in the history of the jurisprudence of the dominions in relation to the Privy Council". Although the appeal to the Privy Council had only dealt with part of the matter decided by the High Court (and expressly disclaimed any intention to do otherwise), the Privy Council had decided that the two parts formed one order, which they discharged. Griffith's commented:

I do not know of any other instance in which a judgement not appealed from, and not impeached, has been reversed by the Privy Council, nor do I know of any instance in which a judgement has been reversed on the appeal of a person who had no interest in the matter.

The Victorian Chief Justice's refusal to restore the previous judgment of the High Court produced this comment from Griffith: "His Honour did not say what should be done. He gave reasons for his conclusion which I confess my inability to understand, and counsel on either side have not attempted to elucidate them". Griffith, with the concurrence of Barton and O'Connor, reaffirmed almost exactly the previous decision of the High Court in *Cock v. Smith*.

Griffith was to clash with the Privy Council in a series of probate cases. The assignees of an administration bond proceeded against the sureties to recover assets allegedly lost by breaches of duty by the administratrix. A bond, dated 1886, had been signed by a daughter as administratrix of her mother's estate and by her solicitors as surety for £5,000. The bond had been assigned in February 1904 to the sisters of the administratrix. The defence relied on a deed, which had been signed in 1886 — before the bond — by the daughter and her two sisters. It indemnified the solicitors from legal action if such a bond were executed. The Victorian Supreme Court held that the deed of indemnity was not contrary to public policy.

Griffith saw the High Court as having to decide first whether the deed was valid, then whether any breaches of trust had been established. In a lengthy judgment relying on precedents and the evidence, he investigated whether the fiduciary relationship of solicitor and client existed when the deed had been signed, the test from previous cases being whether the daughter relied on the advice of the solicitors in the matters in question, that the solicitors knew she was so relying, and whether they could or could not have charged her for their advice. Griffith believed it was clear on the evidence that the daughter had so relied on the advice given. The only real consideration for the money paid to the solicitors was the lending of their name to the bond so as to induce the court to believe that all persons beneficially interested in the estate were properly secured. He deduced that the deed could not be set up in defence. Other grounds could be relied on: the fiduciary relationship between the solicitors and the cestuis qui trustent of their client. He then found that because the administratrix had breached trust, the plaintiffs were entitled to a judgment up to £5,000 for their losses, including the consideration for the
bond. The case should be remitted to the Supreme Court for further hearing.\textsuperscript{42}

In May 1908, five law lords in the Privy Council reversed the High Court’s decision, finding that on the evidence no fiduciary relationship existed between the solicitors and the next of kin and the deed was therefore a good defence and was not contrary to public policy. The three sisters had consented to enjoy the estate \textit{in specie}, and were jointly responsible for the mode in which it had been dealt with and lost; the sureties to the land were not liable for such losses. Where sureties could not be obtained except as a matter of business for payment, such payment could properly be made by the administratrix. Persons of full age and ordinary intelligence being entitled to property in equal individual shares could commit its management to one of their number, with absolute or qualified authority, and such assignment could be established by proof of conduct, by admissions made in court as well as by deed.\textsuperscript{43}

In September 1909, the High Court affirmed further decisions of the Victorian Supreme Court. The first action was for improperly putting into motion the process of the insolvency court: partly for “fraudulently, falsely and maliciously and without reasonable and probable cause presenting a petition and obtaining orders” for sequestration. The action, it was held, needed to prove damages and must fail if the litigation attempted to be stifled were in respect of a claim that was afterwards determined to be untenable. The action must also fail as, following the decision of the Privy Council, there was a good petitioning creditor’s debt and available acts of insolvency. Griffith made clear in his comments his disagreement with the Privy Council. He said that the insolvency action had hampered the Privy Council proceedings, having only “£20 to defend their cause in London... the case was practically heard \textit{ex parte} there, and there is reason to believe that the members of the Board were under some strange misapprehension on questions of fact”. But, he went on, the Privy Council had decided the claim was untenable, so that it did not amount to actual damages: “even if it appeared in the clearest way that the judgement was mistaken, or was given upon mistaken evidence, or that fresh evidence had been discovered – no matter what the circumstances were – so long as that stands as the final judgement between the parties their claim is untenable”. Finally, Griffith upheld a Supreme Court decision not to reopen the case: “We know the judicial history of the very same dispute between the very same parties, we know how it was decided, and we think it would be absurd to allow it to be litigated again”.\textsuperscript{44}

One of the disagreements between Griffith and the Victorian chief justice, Madden, stemmed from negotiations to open the first ice-skating rink in Melbourne. The main issue in the contract case was the extent of a master-servant relationship between a manufacturer of refrigerating machinery and his manager, who had promised to devote all his time to his duties. Despite this promise, the manager promoted an ice-skating rink company, was appointed its engineer (albeit with the knowledge of his employer), was responsible for preparing its plans (his employer successfully tendered for the supply of machinery), and was rewarded by the ice-skating company with 2,000 shares. Griffith reversed Madden’s verdict by holding that the manufacturer was not entitled to claim these shares,
which were not a "secret profit" obtained by persons mainly employed by him; indeed the whole new enterprise had been approved by the manufacturer, who had wished his manager every success. The manager had been detached from his employment so far as necessary to supervise and watch the interests of the ice-skating rink company: otherwise there would have been obvious dishonesty in the acceptance of the manufacturer's tender. Despite Madden's view, Griffith saw no authority, no principle of equity, nor common honesty in support of the manufacturer's claim.

Griffith was also critical of a Queensland judge in a case concerning a contract for the sale of timber. After examining the relationship between oral and written agreements, he cited a general rule: when a contract had been entered into by parol and afterwards reduced to writing, the parties were bound by the writing unless it could be shown by evidence that the written document was not intended to embody all the terms of the contract. The trial judge had found that two terms (the time of the commencement of the contract, and the acceptance of a minimum girth of logs) had not been included in the written contract, and found in favour of the defendant. His decision was overruled by the Queensland Supreme Court and the High Court. Griffith strongly criticised the trial judge, his ex-colleague Real:

it is a very dangerous thing after the close of the evidence to allow an amendment to raise a point founded on some oral statement by a witness, which may be perfectly complete so far as it is relevant to the issues which are being tried, but which if it were given with reference to entirely different issues would be incomplete. It is like allowing a party to raise a new case on appeal when the Court has not all the materials before it.

Griffith believed that there was no evidence that either of the allegedly omitted matters should affect the written document.

Griffith was in the minority against O'Connor and Isaacs in another contract case. The majority upheld an appeal, so reversing a Queensland Full Court decision in a case for damages for negligence. A passenger on a ship was injured by falling through a hatchway which, he claimed, had been negligently left open and unguarded. The defence, pleading contributory negligence, stated that the passenger was drunk and had unlawfully disregarded all warnings. As well, a term of the contract made by his ticket exempted the company from all liability for injuries caused by the negligence of its servants. The passenger denied knowledge of this term, and argued that the company had not given him reasonable notice of it. After two days of the trial at Cairns (during which the passenger claimed for the first time that his injuries were permanent), the company's counsel asked for an adjournment to enable production of the ticket, and to obtain evidence on the passenger's injuries. This was refused by the trial judge, and the jury brought in a verdict of £1,750 for the passenger. The company's appeal to the Supreme Court was upheld: it ordered a new trial on the grounds that the judge had wrongfully directed the jury to consider the injuries as permanent, and that the damages were excessive.

In the High Court, Griffith refused to be bound by strict legalism, although the "rules of law applicable to the questions actually in issue are free from doubt, ... the right of every man to a fair hearing before he is
condemned lies at the root of the tree of justice". He argued that a material part of the case had not been tried, and disagreed with the trial judge's refusal to grant an adjournment:

it seems a strange thing that a defendant who, instead of insisting upon his right to a nonsuit (already asserted), asked for an adjournment for the purpose of enabling him to supply a fatal defect in the plaintiff's case should be treated as estopped by his own generosity from claiming his manifest rights;

and:

it seems to me to be a mere mockery to tell a party on whom a case is sprung for the first time on Thursday that he made no attempt until Friday to obtain any evidence to meet it.

Griffith concluded that the company had been entitled in justice either to a nonsuit or an adjournment. The laches of its counsel could not forfeit this right "unless the proceedings in a Court of Justice are to be regarded as a game of mixed skill and chance, in which the prize goes to the most efficient player and not according to the very right of the case". On this adjournment ground alone, a new trial should be granted. It was also a denial of justice not to give the company the opportunity to meet the claim for permanent damages. He also believed that the jury had been mistaken in extending damages on the basis of complete permanent disablement, which had not been established by evidence. On all grounds, therefore, the company was entitled to a new trial as of right.

The other judges disagreed, arguing that the application for adjournment had been properly refused, since the statement of claim was capable of being construed as asserting permanent injury and it was not necessary for the passenger to produce his ticket. As well, damages were not excessive and an order for a new trial should not be made where the party asking for it was solely to blame for the position.47

Griffith examined the relationship between law and morality in a case involving a meat-preserving company. The company had been formed by a deed of settlement and incorporated by a private act in 1871, which set out that profits and dividends were to go to shareholders. A shareholder who complained in 1910 that the company had never paid a dividend proposed resolutions to establish at a general meeting a new policy. When they were deferred, he brought an action.

Griffith outlined the history of the meat-preserving industry. As an export industry, it depended on formal contracts. If live stock was purchased when prices were high, it was not practicable to preserve the meat with any hope of disposing of it at a profit; on the other hand, a glut of stock resulted in prices so low as to be ruinous to the vendors, the graziers. Consequently, the meat-preserving industry had become almost a subsidiary of the grazing industry. Since the 1870s, the graziers had paid a percentage of their takings to meat-preserving companies in return for the companies buying stock when prices were too high for meat-preserving to be profitable, and paying more than a nominal price when there was a glut.

Griffith could not see that the law could interfere if these purposes and activities were intra vires of the company. It was settled law that an act that was not a breach of legal duty is not actionable merely because it was done
with a bad motive. Therefore the law allowed the company to adopt whatever policy it pleased to guide it in carrying on its operations.

The law does not require the members of a company to divest themselves, in its management, of all altruistic motives, or to maintain the character of the company as a soulless and bowless thing, or to exact the last farthing in its commercial dealings, or forbid them to carry on its operations in a way which they think conducive to the best interests of the community as a whole, or a substantial part of it, rather than in a way which they think detrimental to such interests, though more beneficial (in a pecuniary sense) to themselves. And if they desire to assist another enterprise, it is immaterial whether they are or are not personally interested in that enterprise.  

Barton agreed, but Isaacs dissented, and no injunction was granted to the shareholder; the company need not seek profits for its members.

The duty of an occupier to control noxious weeds was considered in a New South Wales case. Griffith and his four colleagues held that an occupier was under no duty at common law to control prickly pear growing naturally on his land so as to prevent it from spreading to his neighbour’s land, even if it damaged the fence so that dingoes got through and injured sheep. Griffith referred to an English case where the owner had been held responsible when the leaves of his cultivated yew tree had harmed a neighbour’s cattle. The doctrine of responsibility applied only to acts of commission, and had nothing to do with mere omission. Griffith, referring to an earlier case on thistles, commented:

a person who is afflicted by having prickly pear on his land is perhaps deserving of more sympathy than the man who only has thistles. Anyone who has seen prickly pear growing as it grows in some parts of Queensland, for instance, knows that it would be casting an intolerable burden upon the owner of the land if he were compelled to warrant all his neighbours from its spreading into their land.

In considering the unusual issue of whether there was property in a corpse, Griffith and Barton were in a majority against Higgins. They held that under some circumstances a dead human body may become the subject of property. It may possess such peculiar attributes (in this case a still-born two-headed child) as to justify its preservation on scientific or other grounds. If a person had by the lawful exercise of work or skill so dealt with such a body in his possession that it had acquired some attributes differentiating it from a mere corpse awaiting burial, he acquires a right to retain possession of it. Although the public exhibition of such a body may be a misdemeanour (as being indecent and injurious to the public welfare), the mere retention of it unburied is not necessarily unlawful. Griffith stated that it

is idle to contend in these days that the possession of a mummy, or of a prepared skeleton, or of a skull, or other parts of a human body, is necessarily unlawful; if it is, the many valuable collections of anatomical and pathological specimens or preparations formed and maintained by scientific bodies, were formed and are maintained in violation of the law.

Four High Court judges listened in 1910 to debates on the title to the bed of a salt lagoon, the Dewy or D.Y. (now called Dee-Why). The Salvation Army argued that the bed of the lagoon was included in the crown grant
issued to its predecessors in title, or, alternatively, that it had become so by accretion. Griffith, in disagreeing with the equity judge (who had based his decision on the law on the ownership of the bed of inland lakes), began by construing the crown grants of 1819 and 1834. The lagoon was very near the Pacific Ocean, from which it was sometimes separated by a sand-spit. He construed the words used to describe the boundary of the grant ("by that lagoon and the sea" and "by that lagoon to the sea") to mean that the land covered by water was not included in the grant. Such lagoons, he argued, were substantially part of the ocean and could be of public use for fisheries or even for navigation. As regarded accretion, he did not accept that the mouth of the lagoon was permanently closed, making it an inland water. As well any addition to the soil of the grantee caused by such closure would not have been "imperceptible", but had been sudden and immediate, whereupon, citing Blackstone, it remained crown land.  

Griffith's view was accepted by the other judges, including Barton, who commented to his daughter:

> we are plugging away at a long appeal . . . whether the Salvation Army are to have the Deewhy Lagoon . . . It is beginning to be very prosy
> My wonder is really boundless
> That seeing the queer cases we try
> A land should always be groundless
> And a water case always be dry.  

Would Griffith have laughed?  

Three judges reversed another decision of the Victorian Supreme Court by agreeing that the registrar was not justified in refusing to register a mortgage on the ground that a covenant by persons not parties to the mortgage had been added. Griffith showed his dislike of inflexible bureaucracy by arguing that forms given in schedules to acts may be altered and modified . . . Forms of this sort, like forms for use in judicial proceedings, are good servants but bad masters, a proposition which is sometimes — too often indeed — forgotten.

He cited with approval the statement made in 1868 by one of his earliest legal mentors, Chief Justice Cockle:  

> It is more reasonable to suppose that the operations of the Registrar-General's office should be adapted to the transactions of business than that the transactions of business should be adapted to suit the Registrar-General's office.  

As well, he held that the mortgagee had a remedy by mandamus (the granting of which was at the discretion of the court) to compel registration. This decision was applied to another case against the registrar of titles, when again the Supreme Court of Victoria's finding was reversed. Land had been charged with an annuity, and several covenants (including using the premises on the land only as a hotel) were added. Griffith held that the registrar was not justified in refusing to register the instrument as a charge. In Griffith's opinion, "any lawful bargain between parties, the effect of which is to create an interest in land, may be carried out and registered under the provisions" of the 1890 Transfer of Lands Act.  

Griffith's argumentative style is illustrated in a case where the High Court affirmed a decision of the Supreme Court of Tasmania. Griffith held
that a gift for "the advancement of scientific research" was good, despite a dictum in an English case distinguishing between the acquisition and diffusion of knowledge, whereby a charitable gift for the former was bad, unlike a gift for the latter. Griffith could not accept the argument. It was alleged that

"learning" as a charitable purpose means the propagation of learning but does not include the increasing of the stock of available knowledge. I confess my inability to apprehend how the stock of available knowledge can be increased without diffusion of the addition to the existing stock. Knowledge confined to the bosom of the discoverer is not to my mind "available" in any rational sense of the term.

Even if the holder of a university research scholarship failed to disclose his results, scientific institutions were propagating learning.

Likewise, a second gift, for founding, endowing or assisting private institutions for the care of mentally afflicted patients, was also good. It was not invalidated because it could include homes run by speculators for contributors. Would it include private lunatic asylums for the benefit of well-to-do persons who could pay for the treatment? Griffith pointed out "that a trust may be charitable though not confined to the poor; but I doubt very much whether a trust would be declared to be charitable which excluded the poor". In this case,

the testator has ... certainly not expressly excluded the poor from the benefit of this trust ... It is, at worst, possibly ambiguous, which is not sufficient.

He also held the third gift for assisting private convalescent homes to be good, despite similar attacks. He interpreted it as a trust

for a single class of homes or hospitals, established primarily for the benefit of the sick and convalescent, but to which persons suffering from ill-health or constitutional weakness, whom the testator regarded as a different class of person, might be admitted on payment. It is not contended that a gift to a hospital which would otherwise be good is vitiated by a permission to admit paying patients.\footnote{55}

In a probate case, Griffith considered whether a bargain and sale from a sheriff to the bank effectively passed the equity of redemption in the real and personal estate of a testator. The equity judge thought it was good as to the personalty, but ineffectual as to the realty. As the first depended on common law which, according to Griffith's review, indicated that personal assets were bound, the sheriff's sale was valid. The second depended on statute, most recently the 1890 Probate Act. Griffith held that its intention was to place real and personal estate on the same footing as regards actions for the accruing of debts due to the testator. In considering whether all parties had been joined, he placed his usual stress on justice over legalism:

Rules and forms of procedure are not ends in themselves, but means to an end, which is the attainment of justice ... the rule relied upon by the respondents is not a rule of abstract justice which cannot be relaxed, but a rule of practical convenience adopted as a means to an end, which may be relaxed if substantial justice can be better attained by doing so ... Thus regarded, the comparison seems to be one between procedure and procedure, or between substance and form, not between justice and injustice.\footnote{56}
In a case concerning five sons of the Age newspaper proprietor, David Syme, Griffith considered the question of taxation on income received from trustees. Was this taxable at the rate for the produce of property or for income derived from personal exertion? The estate came from several sources, and Griffith used an objective formula and another illustration (a lake fed by several streams) to restate the question. He could only seek answers from the 1895-96 Income Tax Acts, for "there is no common law of income tax". After considering definitions of "income", he concluded that no part could be seen as income derived from personal exertion, so all was taxable as income the produce of property:

reverting to the analogy of a lake — every drop of water in the effluent channels may in one sense be regarded as containing some particles from each of the contributing streams. But I think that in the case of a mixed fund, such as that created by the will now in question, it is impossible to make such a division of sources for the purpose of the Income Tax Acts.

Isaacs dissented from this decision, but it was supported by Barton and O'Connor. However, it was specifically overruled by the Privy Council in July 1914, which concluded that all the income was "from personal exertion" within the meaning of the 1895-96 Victorian Acts.

Griffith was in the majority (of three), Isaacs dissenting, in deciding that a 1911 amendment of the 1910 Land Tax Assessment Act had deprived an equitable tenant for life of a deduction allowable under the 1910 act. The effect of the insertion of the word "legal" indicated "as clearly as possible that in future the privilege was to be conferred upon legal tenants for life, and not upon equitable tenants for life". After the litigation had begun, the act had again been amended (in 1912) spelling out that an equitable tenant for life was not entitled to be assessed as if he were the legal tenant. Griffith refused to apply this retrospectively:

The fact that a provision in an Act of Parliament declares in clear terms that the law is what it really was before does not alter the law . . . the mere introduction of words by way of precaution to clear up doubts — which, having regard to the pending litigation, must be taken to have existed — cannot be said, even prima facie, to indicate an alteration of the law . . . Persons who have had practical experience of parliamentary work know that sometimes it is desirable to insert words where they are not really necessary. For myself, I may say that, however clear a provision might seem to me, if any intelligent person thought that its construction was doubtful, I always thought it my duty to amend the language in order to make its meaning absolutely clear, although the effect was in no way altered.

In any case, the 1912 change had no bearing on this case, which had to be decided on the law applicable at the time of death in 1911.

When a breach of Marconi's invention by an officer of the commonwealth was alleged, the High Court (by a majority of one, Isaacs dissenting) allowed inspection of the offending apparatus in a wireless station. Griffith pointed out that the commonwealth, which held a monopoly of telegraph communication, had erected wireless stations for commercial purposes as well as for communication with ships at sea. The postmaster-general had opposed inspection as being prejudicial to the public interest and welfare of the commonwealth, and to naval and military defence. The inspection
was sought to see whether the new apparatus was substantially the same as, or a mere colourable variation of, the Marconi system. Griffith agreed that the court ought first to ascertain the nature of the alleged state secret, and whether facts discoverable on inspection could, in any intelligible sense, prejudice the public welfare. In this case he could not even conjecture that such an inspection would disclose anything that could reasonably be called a secret — for instance it could not reveal the wave-lengths actually used or intended to be used for defence purposes. He did not accept the arguments of the "assumed ignorance of the Bench, who, it was said, are not experts in wireless telegraphy", replying that the

imperfections of Judges, who are not exempt from human limitations, do not justify them in refusing to make use of such knowledge as they have, or to make any relevant enquiry into facts necessary for the exercise of their jurisdiction.\(^5^{9}\)

Griffith considered ecclesiastical jurisdiction in a case arising from disputes in Brisbane’s Ann Street Presbyterian Church. The Rev. W. S. Frackleton had been inducted there in September 1896, so entering into an agreement or consensual compact with the General Assembly of that church in the colony and the Presbytery of Brisbane. Its commission recommended that Frackleton resign for summoning a meeting of the church session and beginning it without a quorum, and for losing the Common Roll. Frackleton, however, did not resign, whereupon the Presbytery recommended that the General Assembly should dissolve the pastoral tie between Frackleton and his congregation. Frackleton issued a Supreme Court writ to restrain both bodies from removing him from office. The General Assembly then suspended Frackleton as a minister for six months for invoking the aid of the civil court to restrain the church court from exercising its lawful spiritual jurisdiction. Frackleton’s proceedings in the civil courts eventually reached the High Court.

Griffith’s judgment denied the doctrine of the absolute supremacy of the so-called church courts: the Church of Scotland by its Westminster Confession admitted the right of civil magistrates to prevent abuses in discipline. The Presbyterian Constitution, "with its elaborate provisions for the protection of accused persons and for securing them a fair trial", could not be interpreted as approving an agreement by which a minister held his office at the will of the General Assembly. Griffith therefore ruled that the General Assembly had convicted Frackleton for doing a lawful act not forbidden by the church’s constitution: a breach of the compact between Frackleton and the other members of the church. In addition, the General Assembly had not followed its own rules of discipline. Further, Frackleton had suffered an infringement of his civil rights — a loss of money or property — by being prevented from practising his ministry anywhere in Queensland. Isaacs dissented from Griffith and O'Connor on one point, the majority view being that the issue of the writ was not a violation of Frackleton’s vow of submission to the jurisdiction of the Presbyterian church courts.\(^6^{0}\)

Griffith was in the majority with Barton and O'Connor against Isaacs in a case of an unnatural offence against a boy. Griffith outlined the evidence: independent proof existed of an assault on the boy by somebody, but the substantial question was the identity of that person. A conversation at the
time of arrest between the boy, the arresting constable and the accused (who denied doing more than "tickling" the boy) had been admitted. Griffith agreed with the New South Wales Supreme Court's finding that all this evidence was properly admitted, but not with their finding that the direction given at the quarter sessions had been defective because it did not warn the jury against giving any independent weight to the statements made by the constable and the boy in the presence of the accused as corroborative of the boy's sworn testimony. Griffith claimed it was common knowledge to all who are conversant with the administration of criminal law — and I may claim some familiarity with it — that in a very large proportion of cases evidence of conversations with the accused is given, and necessarily given. It is equally common knowledge that it has never been the practice of Judges to caution the jury not to attach independent weight to a statement made by one party to such a conversation and denied by the accused, unless the circumstances of the case are such as to call for such a caution.

From this "common knowledge" he deduced a rule "of common sense as well as of law":

When evidence has been given of an unsworn statement made in the presence of the accused, whether in the course of conversation or not, then, if the circumstances of the case are such as to suggest a danger that the jury may think that the statement should be treated as independent evidence of the facts alleged in it, the Judge should caution the jury against giving it any such effect. If, on the other hand, the circumstances of the case do not suggest such a danger, he need not do so.

This reference to "common sense" led him to a general statement of his legal approach:

Ever since I have had the honour to occupy this seat I have tried — I do not know with what success — to dispel the notion that the law — I am not speaking of the Statute law — is a mysterious esoteric science which can only be understood by the initiates, and to show that it is a system founded on broad principles of common sense applicable to the everyday conditions of civilized life.61

In the present case he was sure the direction had been given in terms sufficient to prevent error being committed by any reasonable man.

A murder trial led to two cases, the first on newspaper comments. The accused, Dr Peacock, successfully proceeded against the publishers of three Melbourne newspapers [the Age, Argus, and Herald] for contempt of court. The material published in their newspapers was, he alleged, "likely to prejudice the minds of the readers against . . . [him] and so endanger his right to a fair trial". The matter complained of was statements of, and comments on, alleged facts expected to be proved in the trial. Griffith, noting that objection could be taken to such pre-trial publication, tried to distinguish allowable comments:

the public are entitled to entertain a legitimate curiosity as to . . . the violent or sudden death or disappearance of a citizen, the breaking into a house, the theft of property, or any other crime, and it is, in our opinion, lawful for any person to publish information as to the bare facts . . . by "bare facts" we mean . . . extrinsic ascertained facts to which any eye-witness could bear testimony, such as the finding of a body and its condition, the place in which it is found, the persons by whom it was found, the arrest of a person accused, and so on.
Any publication likely to interfere with a fair trial was forbidden, as was comment adverse to the accused upon the facts. Griffith then showed how each of the three newspapers was guilty of contempt: the *Age* article clearly indicated that "Dr Peacock was the person who did it"; the *Argus* included an interview with a man alleging that Peacock had disposed of the body; the *Herald* made out a clear case of murder against Peacock.*2

The second case reached the High Court on its main issue, evidence in a case of *corpus delicti*, after Peacock had been found guilty of murder and his appeal had been dismissed by the Victorian Supreme Court. Peacock conducted a private hospital for women, to which Mary Davies had come for an abortion. The Crown alleged she had died after a miscarriage, and that Peacock had disposed of her body, of which no trace had been discovered. A young man called Poke, who was assumed to be an accomplice, gave evidence about the operation. Griffith outlined the facts after explaining the rules of *corpus delicti*: in this case evidence had been given of the woman being in the hospital; three pieces of her jewellery had been found in Peacock's pocket; a neck wrap cut into several pieces was found in his scrub; the remains of clothing (none of which could be identified as the woman's) were found in the ashes of a fire on his farm; a tooth-plate was also found. Griffith believed on "these facts I think it was open to the jury to find that she was dead, and that the appellant disposed of her body".

The next consideration was the probable cause of death. Did she necessarily die after a miscarriage caused by Peacock? Griffith doubted it, and concluded the jury had been misdirected:

The proper direction to be given, it seems to me, is this: that the jury should take the prisoner's statement as *prima facie* a possible version of the facts and consider it with the sworn evidence, giving it such weight as it appears to be entitled to in comparison with the facts clearly established by evidence. Instead of that the jury were advised that if they connected the accused with the concealment of the body they might infer that the appellant killed the deceased woman, and that if they drew that inference they might disregard his statement altogether. That was manifestly a wrong direction, and the conviction cannot stand.

Should there be a new trial? He believed not. The trial judge, Madden, should have told the jury that the accomplice Poke's evidence was not corroborated, and should have advised them not to act upon it. As well, the judge should have advised them that the rest of the evidence was consistent with the prisoner's statement that the deceased was already in danger of miscarriage when she entered the hospital. Further, there had been wrongful admission of evidence that Peacock regularly conducted abortions in his hospital. The judge should have taken stronger steps: "When I say 'should have done', I mean that that is what I think a Judge who had present to his mind the traditions of English law would have done". If the judge

had given proper directions in regard to the corroboration of Poke's evidence as to the alleged confession, the verdict would or might have been different, unless indeed the jury were unable to shake off the influence of the inadmissible evidence or the horror of the secret disposal of the body, "the love of the marvellous and the desire to detect great crimes, committed secretly", and other influences which might unconsciously have affected them.*3
Griffith believed Peacock should be found not guilty, but was overruled by his colleagues ordering a new trial. Both Barton and O'Connor thought the jury's finding that Peacock had caused the death was reasonable, but agreed that the erroneous directions invalidated the conviction.

In a torts case, Griffith sought legal principles after a man was killed when his waggon collided with a train at a level crossing. His widow brought an action claiming negligence in not keeping the crossing lit and in the train-driver not sounding his whistle. The trial judge non-suited her, and the Supreme Court dismissed her appeal. Griffith began his judgment with a plea.

It was for a long time a standing reproach to English law as administered in Courts of justice that it consisted in great part of a "wilderness of single instances" through which no clue of guiding principle was found. Occasionally some eminent lawyer pointed out that decided cases were only of value in so far as they declared or enunciated some principle of law. In comparatively late years an effort has been made by distinguished Judges to remove this reproach, and this Court from its establishment resolutely set its face in the same direction, and I had hoped that their efforts had met the same success. Latterly, however, I have observed an increasing — or renewed — tendency in the profession to resort to the old method of research amongst the wilderness of instances, in which there is only too much danger that both Counsel and the Court, if led by them, may lose their way.

Instead he sought for the principles that needed to be established in an action of negligence: to prove the negligence of the defendant; and to prove that this caused the injury to the plaintiff. Griffith reviewed the facts: an open country crossing; a heavy horse-drawn waggon; a cold, wintry, dark night; a lighted train that may not have whistled. He then asked whether these facts were equally consistent with the accident having been caused by both the negligence of the deceased and the train driver's failure to whistle? Assuming that there was a mutual duty imposed at level crossings, he believed the probabilities were equal, especially as, if the deceased had looked, he must have seen the train. Possibly the horses had jibbed, but the probability was that in the face of the strong wind, the deceased had kept his head down and had not looked to the right. Several cases cited in which travellers were entitled to expect a further warning were irrelevant to these facts.64

Griffith heard mining cases, only a few of which involved significant judgments. One was a Western Australian case, in which the High Court reversed a decision of that state's Supreme Court. The action was instituted by a bank to recover the balance of an advance it had made to alleged members of a partnership. To Griffith, the only question was whether or not they were members of the partnership. The company was formed under an indenture in 1905, and subsequently these alleged members and others agreed to buy portions of their interests. No formal assignments were drawn up, but in each case receipts were given for shares in the company. Griffith, reminded perhaps of his own experience with Mt Morgan, argued that they were not partners: the purchases were "transactions of a nature quite familiar to persons acquainted with the incidents of mining adventures in Australia", did not operate to establish partnership relationships. Neither were they partners according to the 1904 Mining
Act: he was unable to find any indication of an intention to make such important changes in the common and statute law as to allow the number of members of a partnership to be increased at the will of a single member of it. He generalised that all acts altering the common law altered it only so far as was necessary to give effect to their express provisions.**

Griffith was again in the majority, Isaacs dissenting, when the High Court reversed a decision of the New South Wales Supreme Court. A coal miner was sacked for absenting himself without reasonable cause (he was attending a union meeting), whereupon thirty-two of his work-mates demanded his reinstatement and meanwhile refused to work. The police magistrate convicted one of the miners, but the Full Court made an order for prohibition. The defence argued that, by custom, the lodge delegate was entitled to absent himself from work to attend union meetings. Griffith accepted that the evidence indicated such a custom, but that it depended on permission being asked and not arbitrarily or unreasonably refused. In the circumstances, he believed the magistrate was not entitled to infer either that permission was in fact unreasonably refused or that the defendant reasonably believed that it had been so refused.

Griffith’s disapproval of unjustified strikes is reflected in his next argument:

nor do I think that this was, in truth, the position taken up by the 32 men. Their position was, not that permission had been unreasonably refused... but either that such permission was not necessary and that the dismissal was therefore wrongful, or that they and not the employers were the judges of the matter, and that in either case the dismissal... justified their refusal to go to work. They said to the employers, in effect, “We have decided that... [the miner] should not have been dismissed. Re-instate him instanter or we strike”. The employers refused to “stand and deliver” on this challenge, whereupon they absented themselves from service.

In my opinion there was no evidence to justify the position so taken up.

Barton agreed with Griffith, but Isaacs differed: “reasonable cause”... was such as a fair-minded man would in the circumstances recognise as a legitimate ground for acting. The enactment being a criminal one... and the appeal turning on a question of fact, it should not be entertained.**

A company brought an action to recover customs duties paid on what were called “outside packages”. The duties had been collected (between August and December 1907) while parliament was debating a draft tariff to change the law to include such packages. In fact the schedule to the 1908 tariff had continued their exemption from duty. Griffith realised the decision would “apply to many thousands of pounds paid to the Customs Department under exactly similar circumstances”. He saw such collections as a “provisional payment to abide the event, the event being the adoption or non-adoption of the proposal by Parliament”. It had been decided in an earlier case that an action would lie against the commonwealth to recover such payments.

The first defence put forward was that the time limit for appeal in the case of a “dispute”... [six months] had been exceeded. Griffith argued that this was not a case of a “dispute”: “it may be from a perverted sense of
humour, but I feel a difficulty in treating the argument with due gravity. The suggested action would be in the nature of the old common law action on a wager, the wager being on a future event". A dispute was upon a question fit for the determination of a court of justice, not one to be ascertained by perusing the pages of future issues of the *Government Gazette*.

The second defence was that the 1908 tariff specifically provided that all duties collected were to be deemed to be lawfully imposed and collected. Griffith dismissed this by referring to his (and O’Connor’s) judgment in an earlier case; the reiteration of these views by Dr Wollaston the comptroller of customs in his 1904 book; and 1909 parliament’s re-enactment of the 1902 act in similar words.

I find it impossible to attribute to them an intention to use these words in a different sense, unless, indeed (perhaps) the construction put on it by this Court was so manifestly absurd that it cannot be supposed that any sensible person would give heed to it.

He added:

This retrospective operation, so far as regards the right to retain moneys collected in respect of duties ultimately approved by Parliament, is a natural and necessary consequence of the parliamentary system, but the extinguishment of a debt due by the Crown in respect of money unlawfully demanded and never made payable by any law is a provision of a very different character, for which no precedent has been found in any English or Australian Statute, and is more like the Oriental mode of raising revenue by seizing property and refusing to return it than the mode usually adopted in British communities.

He stressed he was not considering whether the confiscation was justifiable "as a matter of policy or morality, or whether the legislature might reasonably have enacted it. Our duty is to interpret, not to make, the law”. On all grounds the company was entitled to recover the money paid.

The judges were not united. O’Connor, Isaacs and Higgins differed from Griffith in holding that the 1908 act reference to "duties of customs" included money paid under a provisional tariff. O’Connor and Higgins agreed with Griffith that there was no dispute and therefore an action would lie to recover the money paid, but Isaacs argued that the company could have caused a dispute: the payment was therefore voluntary, and no action would lie.*

The High Court heard an appeal against a sentence Higgins imposed on a man for evading customs duties with intent to defraud the revenue. The man had admitted to importing furniture in a manner that attempted to avoid duties: he had divided the furniture into three parcels, which had been brought in by his employees, each of whom swore the parcel, whose value was understated, contained his own goods and had been in his use for some years. Higgins had imposed the maximum penalty (totalling £1,211.12.0), as well as forfeiture of the goods, payment of the correct duty, and costs.

Griffith reduced the penalty to £300: it was an isolated offence, not likely to be repeated, rather than a system of fraud. He compared it to the common practice of asking a friend to bring in some articles as a present: “Of course that is contrary to the law, but people might be surprised if such a violation of law were punished by a fine of six times the value of the goods besides their forfeiture”.*
The High Court was divided (3-2) in hearing an appeal from a magistrate who had dismissed a charge against a man of being a prohibited immigrant, having within a year after entering the commonwealth from China failed a dictation test. Griffith saw immigration as meaning more than mere physical entry into the commonwealth, although the fact of entry could be sufficient *prima facie* evidence that the person entering was an immigrant.

In this case, the man had been born in Victoria to a mother bearing a British name and assumed to be of British race. The purported father (the entry in the birth certificate was left blank) was a Chinese with whom the mother had lived as his wife. The magistrate had presumed a legal marriage; Griffith disagreed. ‘Having regard to the conditions in Victoria in 1876, and to the relations between Chinese and European women at that time, I think that there is not even a *prima facie* probability of a legal marriage’, especially as the registration had not listed a father. Hence, at birth, the boy acquired not only a British identity, but also the Victorian domicile of his mother. When the boy was five years old, he had been taken to China by his purported father, leaving the mother in Victoria. Both the father (who kept an interest in a business) and his son were shown to have intended to return to Australia. Was the son an ‘immigrant’ in the meaning of the constitution? Griffith decided that he was not, by considering nationality, domicile and, especially, community:

> every person becomes at birth a member of the community to which he is born, and is entitled to remain in it until excluded by some competent authority. It follows also that every human being (unless outlawed) is a member of some community, and is entitled to regard the part of the earth occupied by that community as a place to which he may resort when he thinks fit.

Higgins and Isaacs disagreed on this main finding: Higgins also disagreed as to illegitimacy. On a point that did not affect the merits of the case, a majority (O'Connor, Isaacs and Higgins) agreed that the dictation test had been improperly applied (it had only been read slowly once). Griffith gave no definite opinion; he was inclined to think it had been proper but agreed that the provisions of the act should be applied strictly.

An example of the few cases heard by Griffith involving admission or suspension of legal practitioners reveals his persistent regard for the high standards of his profession. In 1909, the High Court agreed to entertain an appeal from the New South Wales Supreme Court re-admitting to practice a solicitor who had been struck off the roll in 1896 for misconduct (involvement in a conspiracy to pervert the course of justice). His application for readmission in 1904 had been rejected, but he had been told to re-apply in 1906 with evidence of continued good conduct. He had been rejected in 1906 because of allegations of improper practices as a land agent. In 1909 he was re-admitted (largely on the basis of the 1904 promise); despite grave suspicion, misconduct had not been conclusively proved.

Griffith did not doubt that the High Court had jurisdiction, especially as the public of the whole commonwealth could be affected by the order. Griffith did not accept that any judge could bind either himself or his successors by a promise as to future action to be taken on problematic facts, but that was unimportant in the light of the two conditions: express (proof of continued good conduct) and implied (non-disclosure of contrary
Griffith did not agree that the original offence should be left out of consideration — his reputation was still "grievously tainted" — but rested his main case on the later land scandals. The solicitor, while an MLA and land agent, had been involved in improvement leases that had been cancelled after a royal commission enquiry. A New South Wales judge had described the solicitor's conduct as "reprehensible", a word Griffith found inadequate "to describe the conduct of a man who deliberately lends his name for the purpose of putting the man to whom it is lent in a position to deceive intending clients". Griffith was disturbed by the solicitor's "notion of the moral obligations of a practitioner . . . which he obviously regards as equally applicable to the honourable obligations of a solicitor". Griffith concluded

I am compelled to the conclusion that . . . [he] regards his conduct . . . as quite consistent with the obligations of honour, and that if he is restored to the roll he will regard it as consistent with the honourable obligations of a solicitor to act in a similar manner when opportunity offers.

As such he was not a "fit and proper person to stand in the ranks of an honourable profession, and in whom the public may repose unbounded confidence". 70

Griffith, in a procedural hearing, had to rule whether the expenses for the attendance in Melbourne of a Perth solicitor's managing clerk should have been disallowed. The hearing of the original case had been transferred from Perth to Melbourne because it had been discovered that one of the judges had once advised on this matter. Griffith could find no precedent for the case. Not surprisingly, he praised the High Court's circuit system, which he had inaugurated and defended against Symon: "After five years experience I am of opinion that this system is beneficial both to suitors and to the Court". He believed "with all respect" that some Privy Council "judgments . . . have been based upon a view of facts which would not have been even suggested in the presence of counsel fully acquainted with the actual circumstances of the litigation". As a principle, he ruled that in order to put suitors in all parts of the commonwealth on an equal footing as far as practicable, costs that a litigant of ordinary prudence would incur to secure the proper presentation of his case should be allowed. In the present case, he believed the presence of the managing clerk had helped, so that some costs should be allowed. 71

The vulnerability of judges to criticism was considered in June 1911 on a motion that the Hobart Mercury had not been guilty of contempt of the High Court. An article on Higgins described him as a political judge who had been appointed because he had well served a political party, and went on to censure him for not accepting criticism of "those above us", apparently meaning the Labor government or caucus. Griffith held that not every publication calculated to bring a judge into contempt or to lower his authority was a contempt of court; the test was whether it was calculated to obstruct or interfere with the course of justice or the due administration of the law. These particular words were capable of an innocent meaning. As well, Griffith did not accept that the imputation of a want of impartiality by a judge was necessarily a contempt of court. He noted that the editor had "very properly" apologised, and withdrawn any imputation, but that hardly rendered him guilty of an offence that he had not committed. 72
Griffith's judicial work occupied most of his time, with the circuits of the High Court taking him away regularly from home. He made annual visits to Perth until 1911, and to Brisbane after 1904. He went to Hobart every February, except in 1903 and 1907. Adelaide, partly because of Symon's attitude and partly because of its geographical closeness to Melbourne, he visited more rarely. The sittings in Melbourne and Sydney increased every year.

He had also developed a pattern of holidays, visiting Tasmania each February between 1908 and 1913, and Percy's and Edith's homes each January. Samuel regularly walked long distances there, as he did wherever he was. Thus on 17 January 1911, while staying with Percy, he "walked in morning (9.50 to 12.35) to s. and w. boundaries". In Hobart in 1909 he walked up Mt Nelson with Isaacs and his wife (14th February) — all details meticulously recorded in his diary.73

He continued as a Sydney University senator and served on committees, such as the By-law Committee in 1908. In that year, he moved that the Queensland University Extension Council give full information on lectures, organisation and discipline: they were found in August not to be acceptable to Sydney rules.74 In 1909, the University of Queensland opened, ending the need for approval by the southern university. Griffith continued to be consulted on its progress, for instance in 1911 when a new site was being sought. The Church of England archbishop, Donaldson,
asked for his support of an area in Victoria Park. Griffith wrote, "personally I took a great interest in the matter. Every site in the neighbourhood of Brisbane was considered, and many were visited". He agreed that the present site, around the old Government House, was "generally recognized to be wholly unsuitable", and he compared Sydney University "of which . . . Queensland may hope to be a worthy rival".75

On 13 August 1912, the University of Queensland conferred on Griffith an honorary doctorate of laws in a ceremony similarly recognising James Bryce, whose works Griffith had cited so often in the federation debates. His friend William MacGregor, the chancellor, presided. Griffith's four-day visit was marred by his illness: he records being "very tired" and having "injection of 100,000 grains of mirococcus catarrhibus". Typically, he was worried about what to wear, and wrote to Bryce, who was not over-concerned as to the correct "garb".76

In a ceremony at Brisbane, in Government House, Griffith's sixty-two-year old sister, Mary, was "invested with Insignia of Order of Lady of Grace of St. John" of Jerusalem on 12 December 1911. MacGregor recommended and organized the award, believing it to be the first in Australasia.77

From London, by a unanimous resolution of its council, Griffith was invited to become a vice-president of the Royal Colonial Institute from 30 December 1909.78

Griffith continued to translate Dante, publishing the Divine Comedy in 1912. He had shared its revelations with friends, including Barbara Baynton who saw him regularly in 1911 before leaving for England.79 He sailed when possible, particularly on Moreton Bay. He went out in the Newcastle to see the great white American fleet arrive in August 1908, and attended accompanying official functions. His interest in innovations remained keen; for instance, in September 1909, he went to a "lecture on Flying Machines . . . very interesting. There were some excellent Kinematographs showing the movements in the air of all the principal machines that have yet flown, Zeppelins, the French airships, and other aeroplanes".

As Jeanie Musgrave rightly deducted, Griffith still took "an interest in . . . [his] old game, politics".81 He tried to keep in touch through his gubernatorial contacts. Governor-General Northcote announced his intention to resign in January 1908. He was succeeded by W. H. Ward, the Earl of Dudley, on 8 September 1908. Dudley was to become very aware of how poor were commonwealth–state relations when he planned to visit Brisbane for Queensland's fiftieth anniversary. The opposition, unlike that to Northcote's earlier visit, came this time chiefly from politicians rather than governors.

No personal correspondence has survived between Griffith and Dudley. Although Dudley's pro-commonwealth line was antithetical to Griffith's, he and his family became close friends.82

Griffith records meeting Lady Georgiana Dudley for the first time on 22 February 1910, in Melbourne Government House at an investiture for recipients of the order of St Michael and St George. He described her to Julia as the "Dowager Countess . . . very handsome . . . with a very fine figure, but her features are rather disappointing. She has a short nose. She
is very nice".83 He had tea with the Dudleys in Sydney on 28 March, and again mentioned Georgiana's name. Julia attended the Sydney Union Club Ball, where Griffith danced with Georgiana. On 11 April, they dined with the Dudleys at the Sydney Town Hall and again Griffith's diary mentions Georgiana. At a meeting in the Sydney Town Hall on 28 June 1910, he supported Lady Rachel Dudley's central nursing scheme.

Griffith was in Brisbane when Georgiana passed through on 5 July on Zealandia en route to Vancouver. Griffith, with his luncheon guest at "Merthyr", Barbara Baynton, went across the river from New Farm to Pinkenba to say "goodbye to Lady Dudley and Adeline Duchess of Bedford".84

Following a luncheon with Dudley in Melbourne on 31 May 1909, Griffith "wrote notes for him re [Fisher's] proposed dissolution". The notes, framed in the form of a letter from the governor-general (corrections are in Griffith's own writing), argued that any precedent was not binding; the "duty of the representative of the sovereign" was to consider all the circumstances in each case. Precedents came from unitary forms of government, not from federations. In Australia, elections for both houses were usually concurrent:

the inconvenience [to say nothing of the expense] of holding elections at different periods is very great, and since the object of a dissolution is to obtain the opinion of the constituencies it seems to the Governor-General that, having regard to the vast area of the Commonwealth and of many of the electorates, a sudden and unexpected general election is prima facie less likely to attain that object than one held at a time when it is expected, and when the electors have had an oppotunity of considering the merits of probable candidates.

Such a sudden election, an extreme measure, should only be held if government could not be carried on without it, or if there were some very exceptional "circumstances of necessity which it is impossible to foresee". Such circumstances did not exist: the administration commanded the support of a majority of members, who almost certainly represented a majority of electors. Previous disagreements between the members of fused parties were irrelevant:

The Governor-General cannot assume that gentlemen in a high and responsible position are actuated by ignoble motives in desiring a change in government, merely because they have at a former time been opposed to one another on questions of policy which are now no longer a cause of division.

Fisher had assumed office not because his predecessors had been defeated on any question of policy, but because Fisher's party "abruptly withdrew their support". Fisher's government had been similarly defeated, and no definite and important question of public policy divided the community.

Fisher's suggestion that Senate elections should be held at the same time as those for the House of Representatives was not acceptable, since it would mean that some senators were "in office for nearly a year after the election of their successors. Such an anomalous state of things seems contrary to all notions of representative government". On the basis of this advice from Griffith, Dudley did not grant a dissolution.85

No other example of Griffith's giving Dudley direct political advice exists, although the two remained in frequent contact. Dudley, as had his
predecessor, appointed the chief justice his deputy; for instance in opening
federal parliament and swearing in the new senators on 1 July 1910
(another puisne court judge, Barton, swearing in the members of the other
house). Griffith also swore in the governor of Queensland as administrator
on 21 December 1909.

Griffith last saw Lord Dudley at the Australia Club in Sydney on 27 July
1911, four days before he swore in Denman at Parliament House, Mel­
bourne. Griffith’s relationship with Denman seems to have been less close
than it was with Dudley, perhaps simply because Griffith was in England
for a third of Denman’s term. Griffith’s diary records a number of social
visits with the Denmans, and he offered “Merthyr” to them during their
day in Brisbane in 1912.

Griffith went north with MacGregor — a holiday to Fraser Island on 14
July. They went by train to Maryborough and Bundaberg and returned by
sea in the Otter via Little Woody Island, White Cliffs and Inskip Point;
Griffith recording such natural details as “stumps and charcoal embedded
in black sandstone” on the beach at White Cliffs. He left for Sydney on
26 July, only a few days before the Denmans were due at “Merthyr”.

Griffith does not seem to have contacted the Denmans much after their
visit to “Merthyr”. He was rarely in Melbourne, being busy in the High
Court with such vital cases as the vend (finished on 20 September) heard
in Sydney; and on circuit to Perth from 19 October to 21 November. In
1913, after staying at Molong, he went on circuit to Hobart from 12 to 23
February.

Griffith’s visit to England in 1913 gave him welcome relief from the
strains of the High Court. MacGregor had chided him early in the year:

you may feel “stale” as you say, from the wear and tear of constant work that
carries with it very great responsibility; but you must not think of being old . . .
you should put [in] a summer in the hills of Wales and Scotland and it would
give you new life.*’

Griffith was accompanied by Julia and his daughters, Nellie and Gwen.
They sailed from Sydney on the Orama on 9 April 1913. The “wonderfully
smooth” voyage was via Suez — with calls at Hobart, Melbourne, Adelaide, Fremantle, Colombo (they went to Mt Lavinia), Port Said, Naples
(they toured the city), Toulon (Julia stayed on board), and Gibraltar (for six
hours), before reaching Tilbury on 24 May. Reverting to his practice on
previous voyages, Griffith recorded the ship’s nautical miles each day. The
trip had few highlights, although he danced at the Fancy Dress Ball.
Griffith at sixty-eight still had an eye for women, but was with his family.
At one of the four Mediterranean stops, he was told of the rumours that
he was to be appointed a law lord. This was not recorded in his diary, but
he called on the Privy Council office and the lord chancellor on his second
day in England.*

These visits were also related, using Barton’s cliche, to his “busman’s
day” — sitting on the Judicial Committee of the Privy Council. He had
been appointed a privy councillor in January 1901, and formally took the
oath before King Edward VII at Buckingham Palace on 13 June 1913. He
sat on the committee on twenty-six days between May and October, as
well as writing judgments at other times. He had started work four days

* From his diary.

** From his diary.

* From his diary.
after reaching London, complaining to Barton that "it was rather hard lines to have to get to hard work so soon", but the lord chancellor wanted him "to sit in all the colonial appeals (except perhaps Canadian) and in some Indian ones and I cannot very well refuse". He wrote one judgment, in a British Guiana appeal, and heard others from New South Wales, New Zealand, Jamaica and the Straits Settlements. Most of the cases in June were Indian appeals, and he corresponded with an Indian judge about the difficulties of assessing motives without knowledge of the "habits, feelings and opinions" of an alien people.*

A Cambridge lecturer in constitutional history remarked on Griffith's performance:

you have a very able man as your Chief Justice of the High Court — a leading member of the Privy Council Bar told me that it was delightful to argue a case before him. He was so patient and courteous, so ready to grasp a point and help counsel in its development and equally ready to demolish it if it were not good.90

For Griffith's part, although he told Barton that his amicable relations with the law lords reminded him pleasantly of the first three years of the High Court, he was not impressed by their calibre. A friend sympathised:

what you say about the Imperial Court does not surprise me, seeing the rotten lot that are in office and under what compelling influences they live and move and have their being. But your reward will come some day, and meantime the sonnets in the Vita Nuova will solace you.91

Griffith was to mount a campaign for a better appeals system for the Empire after he returned to Australia. He had not sat on Canadian appeals because

it is said the Canadian Govt. object to any but Lords of Appeal taking part. As I was tired and wanted some time to look around I did not object, although the Canadian claim is subversive of the notion of an Imperial Court of Appeal, under which the Dominions are represented amongst the Lords of Appeal.92

While in Britain, Griffith saw other legal luminaries, and sat in on a murder trial in Edinburgh. He enjoyed a "great night" dining at the Middle Temple, and an evening function "to meet His Majesty's judges" at Mansion House.93

Politically he was inactive in comparison with his earlier visits, although he called at the Colonial Office soon after his arrival, as well as on High Commissioner Reid at the Commonwealth Office, and on the agents-general. While in London, he used the Royal Colonial Institute as his centre. He attended the laying of the foundation stone of Australia House at Aldwych [his diary proudly recorded accompanying the Queen to the dais], but he had no specific mission on behalf of J. Cook's Liberal ministry. He met the British prime minister at dinner parties, saw Lord Knutsford at the House of Lords, and met Sir John Williams, a Welsh Liberal, in Aberystwyth. Lord Brassey welcomed his return, as did W. Kinnaird Rose.

He renewed acquaintance with many of his women friends, including Adele [Mrs A. C. Smith], Jeanie Musgrave, Barbara Baynton, Alice Northcote, Lady Norman, Lady Lamington, Mrs Garrick, Mrs Muirhead Collins, Lady Robinson, Mrs T. Brown and Lady Wantage. His daughters stayed with Jane and Mabel Lindsay of Abington in July. Jane gushingly
thanked Griffith for his translation of Dante: "so very very welcome a gift. Indeed I shall value it more than I can say as being your own gift".  

He called on friends he had made on earlier visits, such as the Skinners, the Hemmants (so important in 1881) and McIlwraith’s son, Andrew. The Griffiths attended two weddings, of ‘Sir R. Atkin’s daughter’ on 10 July and of Ela McEachern on 14 October.

As a tourist, Griffith “did” the familiar sights, new to his daughters, from their centre in Half-Moon Street, Mayfair: the trooping of the colour; the Epsom races; the naval and military tournament; evensong in Magdalene Chapel, Oxford; Canterbury Cathedral; the Royal Academy; the National Gallery; the National Portrait Gallery; the Wallace Collection; an exhibition of old Spanish masters at Grafton Galleries, Hampstead Heath, Madame Tussauds', Woolwich, the Indian Museum and the Victoria and Albert; Covent Garden to hear Caruso sing in Aida. He enjoyed some special events: sailing at the invitation of McIlwraith and McEachern in the new 9,500 ton Katoomba from Glasgow to Portsmouth (which was ironic considering 1881); a visit to Portsmouth for lunch on HMAS Australia, an inspection of HMS Prince of Wales and submarine E5. Another special, and very gratifying, event was the award of an honorary doctorate of laws by the University of Wales, Aberystwyth, on 22 November.

When the family toured the continent for three weeks between 29 October and 19 November, Griffith was doubtless conscious of the contrast with his own student tour in 1866. They travelled by train, staying at Paris, Lucerne, Milan, Venice, Florence and Rome. They went to the top of the Eiffel Tower and of the Leaning Tower of Pisa; saw ashes freshly drawn from the crematorium at Campo Santo, Milan; and walked through the galleries, cathedrals and famous buildings in all the cities.

More significant to Griffith were places connected with his own, and Julia’s, ancestors. He met a cousin, H. E. Griffith, soon after reaching London. His diary records seeing the “church and tablet to Jane Hippie g.g.g.g.g. grandmother (d. 1762)” at Frome. The parents tried to trace, for the girls and themselves, their immediate background. Griffith apparently failed to locate his old home in Merthyr Tydfil, although a newspaper correspondent told him it was still standing in Glebeland; they went to Portishead, where he “walked to Highland Cottage”; and at Wiveliscombe they inspected the congregational manse and visited the tomb of an old family friend, Miss Lean. They called on relatives in Lyndhurst, Glasgow, Stirling and elsewhere.

These visits occupied part of a five-and-a-half week motor tour of Great Britain, which took the family west to Bude in Cornwall and Aberavon in Wales; then north through the Lakes District to Scotland, west to Oban, north to Inverness; south via Aberdeen and Edinburgh; then back through York (with three burst tyres in one day), and the east of England, including Ely and Cambridge, to London. This was supplemented by shorter visits to Canterbury, Portsmouth, Oxford and Brighton.

But overall, Griffith was disappointed in the visit. He had been comparatively healthy. Julia, however, had “suffered a good deal from asthma”, especially in London. More importantly, Griffith had not been offered a permanent legal position, had felt himself, as a colonial, isolated. “I find here a profound ignorance of, and little interest in, Australia and Aus-
tralian affairs, except among a very limited class who have commercial relations with us".95

The return voyage began with the loading of baggage on the Orvieto at Tilbury on 20 November. The family did not sail with her, but joined the ship in Naples after a train trip through Europe. Griffith had his photograph taken in the law courts of Pompeii before the ship left. When it docked at Fremantle on 23 December, they learned of the birth of Percy's son, Owen.
I do not like the outlook for the future in any respect
Griffith

The Australian political climate and his own responsibilities soon absorbed Griffith's energies. In Melbourne, staying as usual at the Menzies Hotel, he inspected his new chambers, and saw his colleagues Isaacs, Duffy and Powers, as well as the barrister A. Shand, while the temperature rose to 101°. Arriving in Sydney on New Year's Day, he saw Barton and met his new grandchildren, Owen and Frances. Griffith saw in the Full Court as soon as it resumed, at Hobart on 16 February. The romance of the "holiday" was over, and reality was bleak: "I do not like the outlook for the future in any respect. Trade, defence, legislation, social affairs, seem on an equally unsatisfactory basis, altho' I am not in an unduly pessimistic mood".1

Griffith's health degenerated during his last years on the bench. By 1916 his health was poor, and he seemed no longer able to recover rapidly. Thus Barton wrote:

The chief is doing his work well but has been very irritable lately, which makes him rude to counsel. He keeps complaining of the waste of time here in long arguments. It may be true, but it is foolish to talk about it in public.2

Relationships on the High Court bench were strained after 1914, with the strong differences on commonwealth-state powers being accentuated.

Isaacs and Higgins, prominent only in the latter stages of the federalist movement, increasingly rejected Griffith's attempts to restrict commonwealth powers.

The Malcolm case illustrates the way the majority of the court was changing interpretations; only the two original judges found in favour of a restriction of the commonwealth power.3 The issue was a commonwealth Seamen's Compensation Act, passed under the trade and commerce power and extended to shipping by section 98. Griffith considered arguments on the similar power under the United States constitution, as well as previous rulings of the High Court and the Privy Council (notably the Colonial Sugar case) before deciding that the law was not within the competence of the Australian parliament. He claimed that the act could clash with state powers, and that it did not comply with the test set up in the Railway Servants' case. The operation of this act was not incidental to the execution
of trade and commerce, nor to any other power conferred on the commonwealth parliament. He drew the analogy of parliament making a law, purportedly under the powers of the banking or insurance sections to compel bankers and insurers to pay their clerks compensation in the event of injury from accident.

Barton agreed with Griffith, but Isaacs, Gavan Duffy, Powers and Rich all held that the act was a valid exercise of the power of the commonwealth parliament.

The judges were more united in the 1915 Wheat case, all agreeing that a New South Wales act was within the power of that state's parliament and had not infringed section 92. Griffith paraphrased section 92 to read: "Every owner of goods shall be at liberty to make such contracts for the transportation of goods from one state to another as he thinks fit without interference by law". He argued that

When the wheat in New South Wales became the property of His Majesty, the Sovereign, as the new owner, had the exclusive right of disposing of it. If the Government desired to export it to another State they were free to do so. Whether they did or did not, their power of disposition was not interfered with.

The appeal was from the Inter-State Commission, set up in 1912. The judges were divided (four to two) as to its status. Griffith, in the majority, saw it as an administrative body entrusted only with quasi-judicial powers, which did not include the right to issue an injunction. He reaffirmed that the function of the judiciary was different from that of the legislature: "I have not thought it necessary", he said,

to deal with the arguments founded upon the actual conditions [of war] existing when the Act was passed, and the alleged, and indeed admitted, intention of the Government to prevent the exportation of wheat from New South Wales. These conditions and that intention may be relevant to the propriety of the action of the New South Wales parliament, which is a question of politics, but have no relevance to the question of its power to enact the law, with which alone the Court is concerned.

In this wartime case, Griffith had refused to consider military arguments, but they were relevant when Western Australia's chief censor charged the proprietors of the Perth Daily News with publishing information about the Suez Canal which might be useful to the enemy. A Perth magistrate had dismissed the complaint. Griffith refused to allow the appeal, which claimed that the decision had been against the weight of evidence:

There is no instance in which this Court has granted special leave to appeal on such a ground, and certainly the Judicial Committee of the Privy Council has never done so in any case, either civil or criminal.

Isaacs agreed that the High Court was precluded by a previous decision from hearing the appeal, although he had

no doubt whatever that we ought to... while... it was of the utmost importance to conceal as far as possible everything that was being done there [at the Suez Canal], there was published... information which, to my mind, could not but be of immense importance to the enemy.

Griffith, after Gavan Duffy, Powers and Rich had agreed with him that
appeal should not lie, took the unusual course of making a direct reply to Isaacs: "I think that the publication complained of was not, in any rational sense of the words, one which was calculated to be or which might be advantageous to the enemy". He also believed Isaacs's precedent was irrelevant, as it was an appeal by a convicted criminal.

In September 1915, the commonwealth War Precautions Act was considered by the High Court. Franz Wallach had been interned under this act on suspicion of being "disaffected or disloyal". In the Supreme Court of Victoria hearing, Wallach, by affidavit, had denied his disloyalty, and the minister of defence on being called, refused on the grounds of public policy to state the reasons for believing Wallach disloyal. The court, by a majority, had ordered the discharge of Wallach.

Griffith upheld the validity of the regulations under the War Precautions Act. He also ruled that the Minister's belief was the sole condition of his authority... he is the sole judge of the sufficiency of the materials on which he forms it... a matter personal to himself... formed on his personal and ministerial responsibility.

Any judicial inquiry as to the grounds on which the belief was based was irrelevant; indeed it would be contrary to public policy and inconsistent with the character of the power itself to allow such an inquiry. The other five judges agreed, so Wallach was returned to military custody.

An Adelaide merchant was indicted by the commonwealth for attempting to trade with Germany. The South Australian judge held that the Trading with the Enemy Act, passed on 23 October 1914, was not retrospective and, none of the evidence preceding that date, he directed the jury to find a verdict of not guilty. The commonwealth applied for special leave to appeal to the High Court, which refused by a majority of four to two.

Griffith, supported by Gavan Duffy and Rich, argued that:

The common law doctrine as to the effect of a verdict of acquittal is too well settled to require exposition... If it had been intended by the framers of the Constitution to abrogate that doctrine in Australia, and to confer upon the High Court a new authority, such as had never been exercised under the British system of jurisprudence by any Court of either original or appellate jurisdiction, it might have been anticipated that so revolutionary a change would have been expressed in the clearest language.

Powers argued that the High Court had jurisdiction, but that this discretion should not be exercised in these particular circumstances; Isaacs and Higgins argued that leave to appeal should be granted.

Three related cases concerning trading with the enemy reached the High Court in 1915. In the first, Griffith was in a minority of one to four in finding a gin trader not guilty. A company involved in selling and exporting gin was incorporated in the United States of America, with branch houses in Rotterdam and Hamburg. The defence was that a neutral was attempting, after the war broke out, to get his property out of an enemy country.

Griffith reviewed previous decisions which made it quite clear that when war broke out all commercial intercourse between citizens of the belligerents became illegal, but did not feel justified in extending that principle to this case:
It has never, so far as I know, been decided that a negotiation with a neutral in a neutral country with respect to property which is at the moment in an enemy country, and which the neutral has used or is using all diligence to withdraw from that country, is trading with the enemy, and I am loth to lay down such a doctrine for the first time.*

In the second case, Griffith was again the only judge to find for the same appellant. The charge this time concerned a letter addressed and posted on 11 August 1914, seven days after the outbreak or war, to the company's agent in Hamburg. Griffith pointed out that the charge had been laid before the Trading with the Enemy Act had been passed, although the royal proclamation of 5 August had stated that commercial intercourse with the German Empire was forbidden. He held, applying the Acts Interpretation Act and the Crimes Act, that this act did not have retrospective operation, especially as it contained no express words to that effect. On the substantive issue he also found for the appellants, interpreting the letter not as an attempt to trade with the enemy, but as a request for goods from the company's house in Rotterdam.9

In the third case, decided in December 1915, the court was evenly divided, with Griffith, Gavan Duffy and Rich against Isaacs, Higgins and Powers. Berwin was charged with shipping bags of cocoa beans grown in Samoa from Sydney to San Francisco with the intention that the proceeds of the sale be credited to a trader in Hamburg. A letter written by Berwin to the American agents was used as evidence, but a letter sent to Bock, which had been detained and opened in the post office, was not admitted. Griffith and his supporting judges argued that they should . . . be very loth to hold that, if a neutral on a visit to a British possession takes advantage of the Post Office to ask his agent in his own country to pay a debt for him there to an enemy he is guilty of attempting to trade with the enemy.

They admitted that the neutral must have written a letter to his American agent and that Berwin may have known (despite his denial) the contents of that letter

But the rule of law that a person cannot be convicted of an offence upon mere conjecture or suspicion is not abrogated or even suspended in time of war, even in the case of . . . trading or attempting to trade with the enemy.10

The validity of another wartime act, the 1915 New South Wales Meat Supply for Imperial Uses Act, was examined in May 1916 in the Foggitt case. Griffith and three other judges (Barton, Isaacs and Rich) found that a section of the act was invalid as it infringed section 92, interfering with interstate trade and commerce. Gavan Duffy doubted the correctness of this view.

The plaintiff company, bacon manufacturers in Queensland, owned pigs in New South Wales and wished to take them over the border to Queensland to be converted into bacon. The attorney-general of New South Wales had refused permission on the basis of the 1915 act whereby all stock was to be held for the Imperial government for supplying troops. Griffith saw the prohibition falling directly under section 92:

It is impossible to accept the notion of an interference with the right of removal across the border which is not an interference with the freedom of intercourse . . . If it is an interference, it is forbidden by section 92.11
This seemed a clear decision, but only five months later it was to be overruled in a parallel case, where Griffith, Higgins, Gavan Duffy, Powers and Rich [Barton and Isaacs dissenting] argued that section 92 was not violated. This case involved the 1914 Queensland equivalent of the New South Wales act and concerned cattle which the Duncans proposed to remove from Queensland to South Australia. Griffith admitted the previous case had been "very briefly, and, I regret to say, insufficiently, argued and considered". The arguments which he now saw as conclusive "did not then find entrance to my mind. In my judgement that case was wrongly decided, and should be overruled".

Griffith saw this new case as being indistinguishable in principle from the Wheat case. His new arguments centred on the importance of the meat supply act, and he now claimed that

The Court is bound to take judicial notice of the War, and of the fact that an adequate supply of meat to the Forces is essential to the effectual prosecution of the War. It must also take judicial notice of the fact that the State of Queensland is one of the most important sources of meat supply in the Empire.

He interpreted the act as meaning that the stock and meat were "dedicated" to public purposes, creating "a right of the nature of special ownership or interest in the stock and meat which is inconsistent with its use for any other purposes". Further, the act placed the stock and meat in custody, so right of ownership could only be exercised subject to the control of the Queensland government.

Turning to section 92, Griffith now argued that the Queensland act did not touch the subject of trade and commerce in the sense in which it was used in the constitution. The states retained the power to make laws about the acquisition of property within their territorial limits. The capacity of disposition was only one of the usual incidents of the ownership of property, and was subject to the laws of the state. Although the plain effect of the meat supply act was to deprive the owner of the capacity of free disposition, this limitation was not against section 92 since prohibiting interstate movement (the basic intention of that section) was not the "pith and substance" of the Act, but a merely incidental consequence of its operation. The effect of the Act is that the stock and meat in question cannot under the law of Queensland become the subject matter of trade and commerce, since the possessors of them are denied by law any capacity to dispose of them at all. But its main purpose was to conserve the stock and meat for the use of the Imperial Forces.

Further, Griffith would not extend section 92 since, under the commonwealth power to make laws with respect to trade and commerce (section 51 [ii]), it could overrule state laws on a variety of cognate subjects (such as whether a trade could be lawfully carried on in a state):

The argument is hardly distinguishable from that which finds in the precept "Thou shalt not kill' an absolute prohibition of war, since war cannot be waged without involving the loss of human life. It is difficult to meet such arguments except by denying the interpretation sought to be put upon the language interpreted.

A barrister, Starke, argued that in this case section 92 did not bind the
commonwealth, to which Griffith responded that he could not "see any good reason" for so limiting its construction, but "it is not necessary to decide the point, and I keep my mind open upon it". Higgins's view of section 92 was similar to Griffith's.

Griffith was one of the judges who, in June 1916, accepted the extension of the defence power of the commonwealth to cover the regulations of the price of bread in Farey v. Burvett. The bench was split, with Griffith being supported by Barton, Isaacs, Higgins and Powers, and Gavan Duffy and Rich dissenting. Under the 1914 War Precautions Act, the commonwealth had been authorised to make regulations for the more effectual prosecution of the war, and by an order of 10 April 1916 had determined maximum prices for flour and bread. Farey had been convicted at a Victorian court of petty sessions of overcharging.

Griffith argued that the commonwealth power to make laws with respect to defence was a paramount power, which must overrule any conflicting state rights. He argued

that the best security of Australia lies in the success of the British arms. Certainly any measure which may have the effect of tending to secure an adequate food supply to Great Britain during the War, and so increasing, or preventing the diminution of, the resources of that part of the Empire would be a measure tending also to the more efficient defence of the Commonwealth as a part of it.

He supported his argument historically, seeing it as incontrovertible that the regulation of the supply and price of food in a beleaguered city would be a proper war measure.

As previously, Griffith claimed that the executive, not the court, must determine the question of fact; whether at a given time the exercise of the defence power was warranted. It was sufficient for the court to hold that the defence power of the commonwealth government could cover a decision such as fixing the price of bread.

In the final case involving war, which was also the second last case heard by Griffith, a man was indicted for making statements likely to prejudice the recruiting of troops. The decision rested on whether an acting attorney-general could initiate a prosecution. Griffith argued that he could from the words in the act, and his conclusion was a final repetition of one of his most strongly held tenets — the separation of the roles of the judicature and the legislature:

We have to find the contrary intention in the language of the Legislature. I can see no indication whatever in the War Precautions Act of any contrary intention. The only ground suggested for saying that a contrary intention appears is that a wiser Legislature might have enacted differently. But that is no business of ours. We have only to consider the language which the Legislature has used.

Despite wartime extensions of commonwealth power, Griffith continued to support states-rights. The opposing Isaacs-Higgins view had not become dominant during Griffith's term, but prevailed immediately after, the turning point being the Engineers' case, decided on 31 August 1920, three weeks after Griffith's death. The court finally threw out two doctrines on which the original three judges had relied: that of implied prohibitions on commonwealth powers, and of implied immunity of instrumentalities.

Similarly to the change of direction in the Engineers' case, a decision in
1920 on section 92 was to go against Griffith's views. The majority [Isaacs and Rich together with the new judges, Chief Justice Knox and Puisne Judge Starke] ruled that section 92 bound only the states. Hence the decision in the *Duncan* case was explicitly overruled, and the ruling in *Foggitt* was reinstated.\(^{16}\)

Griffith faced continued opposition in conciliation and arbitration cases. The first he heard in 1914 was the *Tramways* case, in which the Brisbane and the Adelaide tramway companies both applied to the High Court to overturn awards made by Higgins in the commonwealth arbitration court.

Griffith pointed out that the High Court was being asked to overrule its decision in the *Whybrow* case: "to say that a decision of the High Court, even if pronounced by a Full Bench, ought not to be regarded as a binding authority by a Full Bench in a later case in which the Bench is differently constituted. There are now seven Justices".

He argued that it could not be maintained "as an abstract proposition that the Court is either legally or technically bound by previous decisions", but he believed that this rule should be applied with "great caution, and only when the previous decision is manifestly wrong . . . Otherwise there would be grave danger of a want of continuity in the interpretation of the law".\(^{17}\)

In this case, although *Whybrow*’s case was open to review because of 1911 amending legislation, he reaffirmed the High Court’s power to overrule the president of the arbitration court because he had assumed powers beyond the competency of the commonwealth parliament.

In the *Felthatters* case, also heard in March 1914, Griffith and Barton were overruled by the other five judges (including Higgins). The majority view was that the commonwealth conciliation court would be justified in finding an actual, threatened, impending or probable dispute between the felthatters’ union and their employers, and so in investigating the issue. Griffith was caustic:

> When the apparently innocent and benevolent words of sec. 51 (xxxv) were enacted in 1900, few if any, persons would have expected that it would be sought to read them as equivalent to "with respect to the settlement of industrial claims jointly preferred by employers or employees engaged in industrial avocations in more than one State, and the regulation of industrial matters included in or incidental to them" . . . this is, in effect, the construction which the Court is asked to put upon the words of the Constitution.

As in earlier cases, he limited the power of the commonwealth court to settling industrial disputes properly so called. It should not regulate the conduct of industrial enterprises:

> creating so-called disputes . . . for the purpose of taking the control of industry out of the hands of employers . . . [is] a fraud upon the Constitution, and ought to be so treated.

The court had jurisdiction only to settle an existing industrial dispute extending beyond the limits of any one state, not to lay down a code of regulations for the conduct of the industry. In his view, this case fell into the second category.\(^{18}\)

Griffith was again in the minority with Barton against four other judges in the 1914 *Builders’ Labourers*’ case. Higgins had made an award purport-
Griffith argued that the building trade was not an industry in which an industrial dispute could extend beyond the limits of any one state within section 51 (xxxv) of the constitution. Conditions of work in the building industry were of a local character, and as there could not be competition between its products in different states, the matter was one with which the states' courts were fully competent to deal.

Griffith, as in the Felthatters' case, would not accept that the mere presentation of a log of demands and its refusal created an industrial dispute: "five different sets of disputants in five different States, disputing about different things, agree[ing] to consolidate their demands" was not transferrable to the commonwealth court. Several employers appealed to the Privy Council, but it made no decision until 1917.19

In May–June 1914, Griffith and Barton had again been overruled by four other judges in the Merchant Seamen's case involving shipowners mainly trading in Tasmanian waters. Griffith was sure the dispute was local and confined to Tasmania, although it involved one ship trading with Victoria. Generally, he stated, he had not shifted his ground from the Builders' Labourers' case. The majority judges disagreed; they ruled that an interstate industrial dispute could exist without interstate competition and had only to exist in two or more states, as it did in this case.20

Griffith fought back in the second Tramways' case, delivering a thirty-eight page judgment on 16 October 1914. He was supported by Barton, Gavan Duffy and Rich against Isaacs and Powers. Higgins had made an award, but Griffith (and his supporters) held that there was no interstate dispute: the log of demands the federated organisation of employees served on the employers in several states in 1911 did not represent the real grievances of any body of employees, having been put forward merely to invoke the jurisdiction of the commonwealth court.

Griffith saw no connection between the tramway owners in different states who used different systems (electricity, cable, horse). He believed the main purpose for which the federation of tramway employees had been formed was to formulate joint claims for the commonwealth arbitration court, but when their plaint had been filed in 1911 there was no industrial dispute extending beyond one state. He reviewed the Brisbane 1912 tramway strike, which had followed a dispute over the right to wear union badges. Four hundred and sixty men had failed to report for work, which had led to a sympathy strike by forty-five unions affiliated with the Australian Labourers' Federation "practically paralyzing all business in Brisbane for several days". Griffith claimed that "the 460 men definitely severed their relationship with the Company and could no longer be regarded as their employees", whereupon the jurisdiction of the commonwealth court ended for them. Sixty-five men had stayed with the company, but they had stated they no longer had any disagreement with it and did not desire the intervention of the court. Griffith criticised Higgins for refusing to accept this statement and holding that they were still in dispute: "apparently on the ground that he thought that some improper influence must have been used to induce them to make peace". Griffith could not accept this view:
when parties inform a tribunal that they have no controversy with their opponents it is not competent . . . for the Court to say that it does not believe them and to insist upon treating them as actual parties to the litigation.

Griffith used as supporting evidence against the existence of a single dispute the fact that Higgins had made separate awards for Queensland and South Australia. Griffith, with Barton, also held that the Queensland award was invalid insofar as it directed preference to unionists. Griffith maintained there was no dispute as to preference; the "only evidence . . . is that the Queensland employees thought, perhaps not without reason, that the Brisbane Tramway Company had sometimes discriminated against unionists". An award for exclusive employment of unionists had never been made before in any state. Moreover, it was a claim for preference to an organisation, not to unionists in general. In addition, the award conflicted with the 1912 Queensland Industrial Peace Act (passed before the date of the award) which prohibited discrimination against any person on the ground of membership or non-membership of any association or organisation of employees.  

It was perhaps as well for harmony among the judges that it was not until February 1916 that Griffith sat on another conciliation and arbitration matter, and then that Griffith, Barton and Isaacs agreed. Their decision favoured actions by a Hobart union of waterside workers. Griffith found that the union was "registered under the Commonwealth Court of Conciliation and Arbitration Acts" and that its Hobart branch was apparently a voluntary association. There was nothing in the rules of the union implying "a general authority to a branch or to its individual members to act as agents for the organization collectively". The jury's verdict against the union was therefore without foundation. His conclusion stressed, yet again, that the law was objective:

It is, perhaps, not surprising that when a branch of a great organization like the appellants take action in the nature of a strike some persons should impute the blame to the organization itself, but in a Court of Justice mere surmise or suspicion is not sufficient . . . In the present case . . . there is no foundation for even surmise or suspicion.

In September 1916, Griffith and Barton were overruled by the other five judges, who found a 1914 addition to the arbitration act valid. It (section 21AA) made a decision of a single judge final, without appeal to the High Court as to whether a dispute existed.

Griffith's argument was consistent with his long-held views on commonwealth power: "If an alleged dispute is not within the ambit of the power the Commonwealth cannot by any law which it passes bring it within that power, any more than a man can by taking thought add a cubit to his stature". The question of whether a dispute extended beyond the limits of any one state was, as "shown by weeks of weary litigation, a mixed question, and sometimes a difficult one, of law and fact, upon which it may almost be said Quot judices tot sententiae. But there can be only one true rule of law upon the subject". Griffith believed it "indecorous" to decide this rule pending the Privy Council's decision in the Builders' Labourers' case. He was, however, sure that section 21AA was wholly invalid, not on "the objection of novelty", but on its limited effect. A decision by a single
judge could only bind the parties present, and only on the precise point, whether the court should proceed to hear the suit or not.\(^{23}\)

In December 1916 the High Court differed again amongst its members. Griffith and Barton were in the minority against three other judges in a Queensland sugar industry case. An employers' organisation had challenged a 1916 award of the Queensland Industrial Court as being made without, or in excess of, jurisdiction. Although the Queensland Supreme Court found against the award, some of the judges found that only parts were invalid. The employers appealed to the High Court to rule that the award was wholly invalid.

Griffith agreed that the appeal should be heard because the case was "very exceptional" and of "extreme urgency".

[in] the present time of peril to the Empire . . . It is alleged that the award which is impeached in this case will, if enforced, have the effect of practically putting an end to the industry, but that if its invalidity is now established there is still a chance of keeping it alive . . . The continued existence of the industry involves hundreds of thousands of pounds' worth of property and the welfare of many thousands of persons, as well as the future history of white settlement in tropical Australia, to say nothing of its especial present value as an Imperial asset.

Applying the Builders' Labourers' case, Griffith accepted the chain of jurisdiction, even if there had been mistakes in procedure:

In such a case legal technicalities have, to my mind, the same weight as rules of professional etiquette should have to the mind of a physician irregularly summoned to the bedside of an apparently dying man.

Like such a doctor, Griffith believed he had to act: "it is my imperative duty to express an opinion upon the merits of the case, and I venture to hope that some at least of my brothers on the bench will do likewise". Barton was the only other of the five judges to do so. Isaacs firmly believed the opposite; the High Court should not express any opinion until its own jurisdiction was established.

On the merits, and after examining the language of the 1912 Queensland Industrial Peace Act and events in the sugar industry, Griffith and Barton agreed that the backdating of the award invalidated all of it.

Griffith also attacked the award for including rations, which he believed should not fall under the definition of "industrial matters", and incidentally criticised the list of nearly 100 articles of food, comprising all sorts of edibles, many of which may fairly be described as luxuries. If they are regarded by field workers as necessaries, I can only remark that the standard of living upon which the new doctrine of the "living wage" is based is much higher than prevails in the walk of life to which I am accustomed.\(^{24}\)

This attempt by Griffith and Barton to add the support of the High Court to the Queensland Supreme Court was soon nullified. On 18 December 1916, the Queensland Labor ministry of T. J. Ryan passed the Industrial Arbitration Act, which provided that existing awards were to continue, and could be retrospective. "It is plain", observed Griffith on 11 January 1917,
that in face of those express intentions this Court, if it thought it otherwise right to grant prohibition, cannot do so. Under these circumstances the Court cannot with propriety give any opinion upon the question now before it.\textsuperscript{25}

Griffith's judicial frustrations contributed to his failing health. He was now well into his seventies. A stroke on 16 March 1917 kept him off the bench until February of the following year. He had no chance to comment on the finding of the Privy Council on 8 May 1917 in the Builders' Labourers' case that a decision whether a dispute extended beyond the limits of one state was one as to the limits \textit{inter se} of the constitutional powers of the commonwealth and states. As the High Court had not given a certificate under section 74, the Privy Council had no jurisdiction.\textsuperscript{26}

Griffith sat on a few arbitration cases in the last stage of his career. The Waterside Workers case of 1918 raised the question of whether the president of the commonwealth court was appointed for seven years or life. Griffith's judgment began with a reassertion of his deep-seated belief in the rule of law:

As soon as man emerged from the savage state and formed settled communities, the necessity became apparent for rules to regulate conduct. It also became necessary to make provision for their enforcement, and for the settlement of private controversies between individuals. In each case the right to do so was assumed by the community at large, and vested in some person or authority representing that community. Hence arose lawgivers and Judges. And as civilization advanced, and persons came to discriminate between the diverse functions of the community, these functions were called "the judicial power" as distinguished from the legislative and executive powers.

He believed the commonwealth arbitration court was exercising judicial functions. The power of its president, rather than being autocratic "not founded upon any known principle of law, and limited only by his own will, which, when declared, becomes, like the Roman lady's, the law of the land", was derived from the constitution. Griffith, supported by Barton, Isaacs, Powers and Rich, interpreted its section 72 "to mean that the tenure of all Federal Judges shall be for life, subject to the power of removal". Gavan Duffy and Higgins (the person immediately involved) disagreed, claiming that the section did not prevent the Crown or parliament from granting a tenure for a term of years.\textsuperscript{27}

On the same day that these conflicting judgments were delivered, the full bench of seven judges decided a Queensland appeal that closely paralleled some features of the commonwealth case. In Queensland, two silks and another had challenged the appointment of McCawley, the president of the Queensland Industrial Court, to the Supreme Court as being contrary to the Queensland constitution. The Queensland Supreme Court had upheld the challenge, as did the majority of the High Court, including Griffith (the decision was four to three). The decision rested on the Queensland constitutional provision that judges were appointed for life, whereas the appointment to the Queensland Industrial Court was for seven years.\textsuperscript{28}

Griffith sat on two arbitration cases in 1919, one non-contentious\textsuperscript{29} and the other (his last case) where he was again in the minority with Barton against the five other judges. In considering whether the Melbourne City Council was subject to the jurisdiction of the commonwealth arbitration court, he began by reviewing American cases:
I regard these decisions of the Supreme Court of the United States as to the immunities of municipal corporations rather as historical expositions of the unwritten law which the thirteen colonies had brought with them from the Mother Country and carried with them into the Union than as interpretations of the Constitution of that Federation. As such, they are entitled to very great weight.

He believed the American findings — that municipal bodies were independent authorities and that nothing in the United States federal constitution authorised any interference with this freedom — were applicable to the Australian colonies, hence

it follows, in my opinion, that a municipal authority, in the discharge of that portion of the general mass of State functions which had been entrusted to it at the date of Federation, is entitled to the same immunity from Commonwealth interference as the State itself would be in the discharge of similar functions.30

After 1914, Griffith’s arguments were supported less frequently by his brother judges. For instance, in December 1914, in interpreting two Victorian statutes, Griffith was the only judge of five to consider that the savings bank involved was not a “banker”. He accepted an English definition of banking which included the honouring of cheques and the granting of overdrafts to customers. The other judges disagreed, holding that the collection and payment of cheques was not essential.

A clerk in a shipping and customs agency company had fraudulently converted fifty-eight cheques into his private account in a savings bank which had, without inquiry, collected payment and credited his account. The cheques, drawn by the company to pay customs duties on goods of their customers, fell into two groups: the first were payable to a “number” or to “bearer”; the second recorded that they were in payment of customs duty. Griffith (assuming the savings bank could be defined as a bank) agreed with his fellow judges that it had been negligent with the second group of cheques, so was not entitled to the protection of the two statutes. Griffith believed, with Isaacs, that the bank had also been negligent with the other cheques, but Gavan Duffy, Powers and Rich disagreed. They held that protection was afforded to a banker who acts in good faith when, and only when, his belief in the title of his customer is such as might in the circumstances be held by a reasonably prudent and careful man.31

In March 1918, Griffith agreed with Gavan Duffy and Rich in reversing a decision of the Victorian Supreme Court. The commonwealth had acquired a block of land in Victoria, together with rights over a strip of adjoining land to ensure uninterrupted access and enjoyment of light and air to any building erected on the block. The Victorian land officials refused to register this right, because the easement was not enjoyed in respect of any existing building. Griffith saw this argument as confusing the existence of a legal right with the present physical enjoyment of it and, interested as ever in technical innovation, he expanded the list of possible easements: the passage of aeroplanes through air to a landing place, of an electric current through suspended wires, of a flash from a heliograph station.

Why not also by the sun’s rays? . . . In the olden days air was not thought of as a subject of property any more than as a substance capable of being liquified or solidified. In the light of modern knowledge, however, there is no difference in
principle between a right to the free passage of moving air to my windmill and the free passage of running water to my watermill.

Besides this common law argument, which had not been considered by the Victorian judge, Griffith believed that a relevant commonwealth act clearly stated that the notice of acquisition had to be registered whether the domestic law would treat it as a transfer or not. The other two judges did not make this point, relying only on the common law easement argument.

The judges differed in interpreting "delivery" in bills of lading. A packet of horsehair had been carried by ship from Brisbane to Melbourne, where it was delivered to the wharf on a Friday evening, but was missing on Monday morning. Was the shipowner liable under the bill of lading? By three to two (Griffith, Gavan Duffy and Rich against Isaacs and Powers), the High Court reversed Madden's decision in the Victorian Supreme Court by holding the shipowner was not liable.

Griffith, arguing that the shipowner was not relieved from liability for negligent or improper delivery, analysed the difference between "improper" and "constructive" delivery, examples of the latter being

of milk in the morning into a receptacle placed on the purchaser's doorstep, . . . in country districts of Australia of fencing wire and other fencing materials by dropping them at convenient places near the line to be fenced, . . . of mails and parcels into a box on the roadside opposite the gate of the addressee, . . . of cargo by river steamers by merely leaving it on the river bank at an agreed place . . . of goods by dropping them into the sea in a cask with a flag attached at an appointed place (as, for instance, at the Cocos Islands).

"Improper" delivery would include discharging sugar or salt packaged in porous bags when it was raining heavily, or dropping the bags into water or mud. In this case, however, there had been proper delivery; indeed the complaint was of default in not taking sufficient care of the goods after the acts stipulated had been done.

Griffith showed his country knowledge in interpreting a contract for the sale of cattle. The jury in the Rockhampton trial had found for the seller; on appeal, the decision was reversed by Isaacs, Gavan Duffy and Rich, with Griffith and Barton dissenting. A settler had bought two mobs of cattle, one from a property called "Lake Dunn", which Griffith, using his Queensland experience, described as being "in a remote part of central Queensland" in "the desert country", a dry tract on the western slopes of the great coastal range, once thought useless for any purpose, but "now found to be available for pastoral purposes during a portion of the year in favourable seasons". The other mob was on the adjoining property of "Battynetty". Griffith explained local custom: because of the time needed to muster and overland cattle in remote places, the time of delivery (which was to be at some suitable place in open country three hundred miles south) was taken as the date on which delivery commenced, rather than was completed. He stressed how different the circumstances were from "a sale of two milch cows depasturing in adjoining meadows".

Griffith argued that the agreement for the sale of the two mobs of cattle was a single and entire agreement. He could see excellent reasons for implying as a warranty that delivery should be continuous, but none for implying it as a condition.
It is, in my opinion, nothing short of absurd to construe the contract as expressing an intention that the purchaser should be entitled to treat an interruption in the course of delivery, or ... a notification of the necessity for a temporary interruption, as a repudiation of the contract by the vendor.

He again relied on his local knowledge in explaining the delays:

Anyone familiar, as a Rockhampton jury would be, with the conditions of the "desert country" would know that the holding of mobs or drafts of wild cattle without the aid of fences or yards, and with a scanty supply of grass and water, cannot be long continued, so that the process of mustering, holding, and delivering to the purchaser must practically go on in continuous succession.

He believed the jury had had abundant evidence to find that the purchaser's agent had authority to vary the contract by substituting a later date for delivery of the "Lake Dunn" cattle (the purchaser had refused to accept delivery of the second mob).

Griffith was scathing about his fellow judges disagreeing:

I confess that I am unable to reconcile a defence based upon such facts as appeared in this case with my notions of common honesty, and I am glad that I do not find myself constrained either by any "plain enactment or strong authority" ... to give effect to it.

The court found that the agent had no authority to alter dates, and that the two contracts were separable. Griffith's indignation was exonerated in June 1916 when the Privy Council reversed this decision. It agreed that the agent had authority to vary the contract; the verdict for the seller should be retained.

Griffith was also to be supported eventually in a case involving a contract for the sale of a pastoral station. He had been overruled by two brother judges when the High Court reversed the decision of the Supreme Court of Victoria. Griffith agreed with the trial judge's direction to the jury to find for the defendants, on the ground that the contract, not being in writing, was invalid under the Statute of Frauds. The plaintiff alleged there had been an oral contract, by which the purchase price of £84,000 was agreed to be raised by mortgages. Griffith, stressing that the Statute of Frauds had been pleaded, pointed out that "a contract to contract is nothing". He concluded:

Irrespective, altogether, of the matters of law with which I have dealt, I think it right to say that, in my opinion, the whole of the evidence points to the inevitable conclusion that the language of the defendants' officers ... was in fact, as it was in law, the language of confident assurance of their ability to do what the plaintiff desired, that is to say, to procure a loan for him, and not the language of contract.

In contrast, the other two judges believed that a reasonable man might conclude that an agreement had been made to raise money, which was an enforceable contract, and as it did not concern an interest in land, it was therefore not within the Statute of Frauds. They ordered a new trial.

The case reached the High Court again in March 1916. In the new trial, after fresh evidence, the jury had found for the plaintiff. On appeal to the Full Court, judgment was entered for the defendants on the defence of exoneration. In the High Court, Griffith with Barton was again in a clear
minority, dissenting on all points against the other five judges, who allowed the appeal. Griffith rejected the plaintiff's position that the jury should disregard everything except his sworn statement as to the verbal contract. "A jury", he maintained,

is not entitled to reject from consideration the undisputed facts and circumstances and the contemporaneous written statements of a party in favour of a verbal statement made by him many years afterwards inconsistent with such facts and statements. Such evidence is in different planes.

Griffith again concluded that the alleged contract was void "for incompleteness, or, as it is sometimes called, uncertainty". He could not accept his fellow judges' argument about "reasonable" conditions:

With great respect, the word has no meaning in such a context. The doctrine that in a contract for the sale of goods which is silent as to price the law will infer that the price was to be reasonable, or that on a contract for the sale or lease of land usual conditions may be implied, has no application to the case of a contract for a mortgage which is silent as to the conditions of redemption.

Griffith agreed with four of his fellow judges (only Isaacs differed) that the previous decision of the High Court did not estop the defendants from again arguing that the agreement was not an enforceable contract. Griffith believed that a decision to grant a new trial was not a final decision upon any point except that the matter should be further investigated.36

The Privy Council, on 13 May 1919, reversed the decision of the High Court.37 The council held that a contract had been established but, as it concerned land, it should (under the Statute of Frauds) have been in writing; hence the trial judge had properly withdrawn the case from the jury. The council criticised the High Court for making a case for the plaintiff which he had not himself made at the trial. The decision must have been satisfying to Griffith: his minority view had been exonerated and his warning to the Privy Council not to raise new issues, given on 27 May 1907, had been recognised.

Griffith's condemnation of political chicanery was made clear in a case arising from an attempt to sell a large tract of land to the government of New South Wales under the Closer Settlement Acts. A man, who had been promised a commission of £1,000 on the sale, offered money to two members of the New South Wales Legislative Assembly if the sale went through. Griffith was blunt: "the learned judges in the Supreme Court spoke of the work to be done by the plaintiff as 'advice'. I should prefer to call it exerting political influence or pressure upon the Government'. He was also blunt as to the position of the politicians:

There cannot be a plainer case of a man attempting to serve two masters. They owed to their employer, the appellant, the duty to press forward the contract regardless of the interests of the public, and as members of the Legislature it was their duty to consider the matter impartially before voting upon it. It would be deplorable that any doubt should be allowed to exist as to whether such a bargain is tolerated by the civil — I say nothing of the criminal — law.

The law cannot supervise the conduct of members of Parliament as to the pressure they may bring to bear on Ministers, but if they sell the pressure the bargain is, in my opinion, void as against public policy.38
With the support of Isaacs and Gavan Duffy, Griffith reversed the decision of the New South Wales Supreme Court.

The final taxation case heard by Griffith was in April and May 1919, when typically, if sadly, his was the sole dissenting voice. Griffith argued that in a case involving income derived from both personal exertion and property, the proper method was to apportion between the two sources the sum exceeding the minimum taxable income after allowable deduction (£156). As both parties were in the wrong, no costs should be awarded. He added a note, which was printed in the Commonwealth Law Reports under his initials, giving an algebraic calculation of diminutions which he saw not as "a matter of argument but of arithmetical calculations made in the manner directed by the Act". Details were always important to Griffith.

In Griffith’s final domestic case, the High Court reversed a decision of the Victorian Supreme Court. A man had married a woman because he believed she was pregnant by him. He had no home to take her to, and she returned to her own people. Before the baby was born, she confessed that another man was the father. The husband was willing to forgive her, but refused to take the child into his home or to maintain it. The wife decided to stay with the baby and her people. Griffith saw

the wife’s refusal to go to his home ... in the first instance an absolute refusal, unless he complied with the condition that the child should live with her. He replied that he could not comply with that condition. Her refusal then stood as an absolute refusal, and, ... desertion commenced at the date of the refusal.

The husband did not have a duty to receive the child into his home, and had not, therefore, deserted her.

Issues of criminal, constitutional and common law arose from the trial of four men indicted by the commonwealth attorney-general for conspiring to defraud the commonwealth. They were proceeded against under a 1915 act, backdated to 29 October 1914, the date the commonwealth Crimes Act came into force. Griffith, the presiding judge, reserved questions for the Full High Court, in which he sat.

Griffith’s final judgment, which the other judges supported, opened by debating whether the commonwealth had the power to pass retrospective legislation, which he pointed out was forbidden by the constitution of the United States of America, but not in countries (such as the United Kingdom) where the legislature had plenary power. The answer must be found not in moral terms (“analogous to that which comprises the consideration of parental duties with regard to the chastisement of children”), but in the federal constitution. Section 51 had no provision covering criminal law, and neither was it an apparent incident (applying section 39) of any of the powers there listed.

Another question could, however, be posed. Was it within the competence of the commonwealth government to confer on the High Court original jurisdiction in respect of offences against the common law? Was there then any common law in Australia independent of that forming part of the law of the several states? Griffith related the question to the rights and prerogatives of the sovereign in his capacity as head of the realm. He had no doubt that it was an offence at common law to conspire to defraud the king; that that part of the common law had, on settlement, become part
of the law of Australia; that it had remained an offence against the king as head of each colony; and that on the establishment of the commonwealth, the same law made it an offence against the king as head of the commonwealth. This embodiment of the common law fell under section 39. A statute, insofar as it referred to the courts in which offences against the law so declared were to be tried, was a law of procedure, which could be retrospective.\textsuperscript{41}

At the end of 1914, the High Court by a majority, including Griffith, ruled that it should follow the procedure of the Privy Council as set out in two recent (1914) cases as to granting leave in criminal cases. On the facts of this case, which had led to a conviction for indecent assault on a girl less than five years old (the appeal was based on the lack of corroboration of her evidence), Privy Council practice would be not to grant leave. Isaacs was critical, differing on both points, and on the previous restrictive practice of the High Court.\textsuperscript{42}

In a case in 1915, the High Court, by three to one (Griffith dissenting), agreed to rescind special leave to appeal from the New South Wales Supreme Court, which had confirmed a magistrate’s order to imprison the owner of an obscene publication and to destroy copies of it.\textsuperscript{43} The High Court, including Isaacs, followed its 1914 decision.

On June 15, 1915 Griffith made a statement from the bench on the 1914 case: “It has been ascertained that the rule of practice as formulated in that case is interpreted by the members of the Court in different senses. The case cannot, therefore, for the future be regarded as an authority”. He spoke for all members of the bench except Barton, who was absent overseas. The judges’ interpretation of the Judiciary Act was that the High Court had an unfettered discretion to grant or refuse special leave in every case, but that the term “special leave” connoted the necessity for making a \textit{prima facie} case showing special circumstances.\textsuperscript{44}

Griffith drew on his experience in the bush in a negligence case. One of a gang of labourers maintaining irrigation and drainage works, started a camp fire that got out of control and did considerable damage to a property. The grazier sued the Lands Board and Rivers and Water Supply Commission. The trial judge had found for the grazier against the commission, but not against the board. The Supreme Court reversed the judgment against the commission.

Griffith, accepting the negligence of the labourer, considered the question of whether either the board or commission was liable. He could not see that the commission was: it was not in "occupation" of the land, and it was impossible to contend that an employer who obtains lodgings for his employees upon a stranger’s land thereby becomes responsible for any wrong they may commit while occupying them. As for the board, the case rested entirely on the permission (alleged but not proven) to camp on land over which it had control. Griffith strongly dismissed the case against it:

It would be a shocking thing to lay down as a rule of law in a country like Australia, where probably hundreds, if not thousands, of men travelling on foot in sparsely settled districts ask every day for permission to camp for the night on private property, the owner by granting such poor hospitality becomes responsible for the lighting of a fire by the wayfarer to boil his "billy" or keep himself warm.
As well, *respondeat superior* did not apply between principal officers of government and their subordinates, except for wrongful acts in which the former were personally concerned.45

A train passenger whose arm was injured by the door of a passing train, sued the Railway Commission for negligence. The jury found for the passenger, but also found that his elbow was outside the window when it was injured. The Supreme Court reversed the verdict.

Griffith, in reviewing the facts, noted that two other passengers in the same train had been injured by swaying doors. He could not accept the argument that if a person protruded part of his body outside the train window — for "flicking the ash from the end of his cigar, or some other equally innocent purpose" — he was making an unauthorised use of the carriage and was in no better position than a trespasser. A passenger had implied authority to make such use of an open window of a carriage as is sensible and usual under the circumstances. He was, however, bound to take such care and observe such caution as a reasonable man would take to avoid such injury as was reasonably to be expected or anticipated. These depended on the circumstances:

There are in Australia thousands of miles of single-line railways on which the probability of injury being done to a passenger, who has his hand or arm out of window, from being struck by a passing train or other object passed by his train would be infinitesimal, while in other places it would be obvious. The test was whether this passenger had failed to take such care as was reasonable under the circumstances. Griffith believed the jury as reasonable men were justified in finding on the evidence that he had exercised reasonable care.46

In his final insolvency case in August 1916, Griffith was in the minority with Barton [two to three]. A bankrupt, after being so declared, had taken out a life assurance policy on his own life: the question was whether the official assignee was entitled to its proceeds. A section of the 1902 Life, Fire and Marine Insurance Act purported to exempt insurance policies from bankruptcy laws. Another section stated that this protection began after two years, with increasing protection up to ten years. Griffith accepted that this statute should apply, even if under bankruptcy laws the property and interest on the policy would vest in his official assignee. He argued that the words of the statute showed that it did apply, whether the policy was taken out before or after bankruptcy.

There is no more dangerous, nor, I fear, more seductive, fallacy than to substitute for the actual language of an enactment some formula which could in some cases lead to the result which one is *a priori* disposed to arrive at, and then to construe the actual enactment as equivalent to the substituted formula. The mental process appears to be an unconscious application of the mathematical axiom "Things which are equal to the same thing are equal to one another", with the fallacious interpretation of the word "equal", where first used, as "equivalent in result".

After examining various possible interpretations, he concluded:

I fear that I have occupied too much time in a demonstration of the obvious...
ance with their express provisions instead of construing them according to a supposed intention gathered from extrinsic sources. In this case the Court is invited to enter the forbidden path. I respectfully decline to do so."

Only Barton agreed, Isaacs, Gavan Duffy and Rich arguing that the insurance act had no application to a policy effected by a bankrupt after he had been so adjudicated, and that although the policy had endured for more than ten years all the money due belonged to the official assignee.

In the last mining case heard by Griffith, he was in the minority, as he was in so many cases in other fields of law. Nine mining leases were cancelled for non-fulfilment of labour conditions after notice in the Government Gazette. Four were issued under the 1874 Mining Act, four under the 1894 Mining or Private Lands Act, and one under the 1906 Mining Act.

Griffith dealt with each set separately. He dismissed an objection to the first set: that the notice was not signed, as required, by the secretary of mines. It was dated from his department, dealt with a matter that was required to be officially notified, and bore the printed signature of a person who at that date was the secretary. "Pages of reasons would add no more. To my mind the contention that this notice does not purport to be signed by the Secretary of Mines is not arguable. The learned Chief Judge in Equity was, however, of a different opinion. In my opinion he was wrong". Neither did Griffith believe that the Gazette required both a declaration that the governor declared the lease void, and that it was void: "In my opinion the notice conveys with sufficient certainty to any intelligent reader that the cancellation was by the Governor". Furthermore, he did not believe it to be against public policy that the governor-in-council's decision should be final — "as tending to exclude the jurisdiction of Courts of law to inquire" — as otherwise an intolerable burden would be cast on courts to determine matters that were really matters of routine administration.

The second set of leases similarly had been properly forfeited. With the final leases, however, he found a substantial defect. According to the act, the cancellation by the governor was incomplete and ineffectual until a date of cancellation had been proclaimed.

Isaacs and Gavan Duffy disagreed as to the first and second sets, believing the objections as to the signature were important, but agreed with Griffith as to the third set. As a result, the validity of the cancellation of all leases was open to dispute.48

Griffith's only case in the High Court's admiralty jurisdiction was in 1916, following the dismissal of a claim by the owners, masters and crew of the Cartela for towage or salvage of the Inverness-Shire. The majority decision of the High Court was given in a combined judgment of Griffith, Barton and Rich, to which Isaacs dissented.

The agreed facts were that the Cartela, whose master was licensed only for the port of Hobart, had been requested by the government to tow into the port for £25 the Inverness-Shire, which was in distress and apparently abandoned near the lighthouse at South Bruni. Another master who did not know of the previous terms, was nominated. When he reached the Inverness-Shire, which was fully manned, he offered to tow her in for £500. His offer was accepted, and with difficulty the two ships made port.

The majority judgment was that salvage was negated because of the
contractual obligation and because the service was rendered in the course of official duty. The master of the *Inverness-Shire* had agreed to pay £500 in the belief that the *Cartela* was an ordinary vessel falling in with him when in distress and offering services under circumstances that would make them salvage services. In fact, she was a government ship engaged under special contract to search for him. It was admitted, however, that £25 was an inadequate remuneration for the services actually rendered — which were substantially different from those supposing to exist when the contract was made. A rule of maritime law allowing additional remuneration in such circumstances was cited and adopted. These extra services were analogous to salvage, depending on a liability of maritime law. The total additional assessment was £175, to be distributed to the owners, master and all of the crew.49

Griffith and Barton were in the minority in June 1916 against Isaacs, Higgins, Gavan Duffy, Powers and Rich in the case of a disputed election for Denison ward of the city of Sydney. The issue rested on the interpretation of the 1902 New South Wales Sydney Corporation Act.

Three candidates had received, respectively, 872, 843 and 840 votes. The application was brought by the candidate with the fewest votes against the second candidate. It was shown that thirteen strangers had voted in the names of thirteen registered voters who had not themselves voted. The Supreme Court consequently held that the second candidate was not duly elected.

In Griffith's lengthy judgment (over sixteen pages of the law reports), he pointed out that the ballot papers were indistinguishable, so it was not certain whether the thirteen votes actually affected the result. (The suggestion that they should come forward and give evidence as to how they voted reminded him "of the unfortunate remark of Queen Marie Antoinette when told that the women complained that they had no bread. Moreover, I do not think that their evidence would be admissible, or, if admissible, credible".) Griffith found the suggestion that personated votes must be counted as valid and effectual for all purposes "so shocking that it bids one pause before holding that it is a part of the unwritten law of the realm". No guide could be found in British decisions, since British ballot papers were numbered, and personators' papers could be rejected on a scrutiny. Recourse, therefore, had to be to common law, at which point the seventy-year-old Griffith paused to make his approach clear:

The duty of this Court is not limited to following ancient precedent with a halting foot. It is not a mere gramophone . . . One of the most important functions of this Court, as I have hitherto understood them, is to ascertain and declare the unwritten law of the realm, which provides for and governs contingencies not specifically dealt with by positive law, and to apply that law to the novel and changing circumstances arising in a newly settled country or under experimental forms of legislation.

Election consisted of choice by a majority of competent electors, and the first duty of every representative body was to verify the title of the persons claiming to be properly elected. The relevant common law could be summed up in one sentence:

If, having regard to the circumstances attendant upon an election, it appears that
there is good ground for believing that the formal result does not represent the free and deliberate choice of the competent electors, the election may be declared void.

After reviewing British and Australian cases, notably decisions in 1904, Griffith claimed that the court was now being asked to overrule all these cases.

With all respect to the opinion of my learned brethren who form a majority of the Court, the proposition that the intrusion into an election of a sufficient number of strangers to turn the scale is not by the common law of England and Australia a ground for attacking the validity of the election remains to me, as I said during the argument, unthinkable.

He could see no special provisions in the Sydney Corporation Act that would take this case out of the general rule. His review of cases followed by the Supreme Court of New South Wales showed that its judges supported the proposition that the intrusion into a municipal election of a number of unqualified persons sufficient to turn the scale invalidated the election. "It would need a man with more confidence in his own wisdom that I can claim to possess ... [to oppose] the contrary opinion of twelve Judges of the Supreme Court of New South Wales and three members of this Bench". Griffith concluded that it "is in my opinion impossible, without entirely disregarding well established rules, to overrule the decision of the Supreme Court now under appeal". Nevertheless only Barton supported him, and the other five could not see sufficient reason why the personated votes should invalidate the election.*

The case led to an angry exchange of letters between the judges. Four of the majority judges complained that Griffith had not fairly represented their position. When Griffith reasserted his decision, saying he regarded it as of vital importance, Isaacs replied: "we never doubted the strength and sincerity of the views you held as to the heinousness and dangers of personation", but he suggested that neither side understood the other.*

This clash between the judges in June 1916 typified the growing insecurity of Griffith's world. No longer could he obtain satisfaction from his compulsive routine. His melancholy was not lightened by his health; he recorded high temperatures and "great lassitude and weakness in knees". Griffith received the protests from his colleagues at "Merthyr" in Brisbane, where he had been spending the law vacation. Here he was to continue his experiments, begun in 1912 with something far outside the bounds of legal logic — a divining rod. He reports using a custard apple tree rod "with great success" and reading Frazer's discussion in *The Golden Bough* of such rods. While in Brisbane, his brother-in-law Henry Oxley died, and he went with Julia and Eveline to Llewellyn's grave. Julia continued to be his closest support. Their marriage, now in its forty-eighth year, had fallen into a happy routine after the crisis of Llewellyn's death in 1901. Both parents were close to their immediate family, which was expanding; the reunion in Sydney on their return from England on 30 January 1914 brought together their five surviving children and eight grandchildren. Griffith recorded all their birthdays in the front of his 1915 diary: Mary (Evie) Brown was living in "Merthyr" with three surviving children (born in 1898, 1902 and 1908; Jemima, Thomas and Eveline);
Helen (Nellie) was unmarried; Edward (Percy) was still happy on the land at "Auburn Vale" (Cudal) — although drought was to force him to move by 1918 to "Winnivy", an orchard in Orange — and had two children (born in 1908 and 1913; Edna and Owen); Edith (Edie) was at "Cardington Hall", with three children (born in 1909, 1911 and 1913; Margaret, Janet and Frances); Alice (Gwen) was still unmarried.53

Griffith’s surviving letters to "my dearest Julia" were discreetly affectionate; thus after being away for thirty-eight days in 1914, he commented, "it is a very long time since we parted, and I shall be very glad to get home". These letters were usually written during High Court circuits, but, typically, give more details of travel than of legal decisions. Thus he complained in September 1916 that the train had "no rug under the sheet on the hard sofa and it was not warm enough", whereas only hints of his work were given, writing from Melbourne’s Menzies Hotel on 8 June 1915 after reporting a long walk with Higgins:

I am very much pressed with work. There are so many judgements outstanding. I have just finished one, and have two more to write, both very complicated cases. However, I suppose I shall be through them in a day or two.

Outside events, particularly the war, affected Griffith, who recorded finding it hard to do "ordinary work in such anxious times".54 Barbara Baynton
shared his concern in a long discussion on the eve of the war, 3 August. Although his own son, Percy, did not serve overseas, Griffith was close to other involved parents. On 24 May 1915, he reported his brother judge Rich leaving the bench in Adelaide after hearing of his son's death at Anzac, and also referred to "Mr. Street's son. There will be a great deal more slaughter in the Dardanelles before Constantinople is taken". On 23 December 1916, Higgins lost a son. Griffith's Queensland cousins from Barcaldine were at Anzac and in France, where one was killed in July 1918. Lucinda Musgrave's two sons served in Mesopotamia and France. He was indiscreet enough to repeat to Julia rumours on 29 September 1914 that "the departure of the troops is put off for at least three weeks. I suppose because there are German cruisers in the Indian Ocean", repeating his belief of a week earlier that the Indian and Pacific oceans were not quite safe. Later (3 October), he told Julia not to expect "dividends from Mount Morgan during the war, even if they keep on working". His clash with the judges in June 1916 coincided with his attending a memorial service for Lord Kitchener, and the first heavy Australian casualties in France.

Social gossip (much from Government House circles) was recounted to Julia, as was Griffith's settled routine, such as regular visits while in Melbourne to the property of his close friend Molesworth Greene. He went to "Greystones", near Bacchus Marsh, by train, and records once being upset when a compartment was not reserved for him by the station master. Fortunately, his prestige was such that a seat was found for him in the packed train. Griffith was later to be remembered by Greene's daughter as a "young-looking elderly man, slim and active ... the type who would smile and pat you and appear quite pleased to see a young thing". Greene died in October 1916, at the age of eighty-nine, which must have reminded Griffith of mortality, for Molesworth — like Griffith — was very active. He had commented in 1911 that "Mr. Greene was 84 in July and looks about 70".

Health had long been an obsession of Samuel's. He recorded his temperature regularly, and consulted doctors in Sydney (Bullmore, Godwell), Melbourne (Grant) and Brisbane (Cameron). He blamed his recurrent high temperatures and stiff joints on severe attacks of dengue fever in Queensland in 1915 and 1916, both of which had left him "scarcely able to stand". His diagnosis was supported in 1916 by Grant, who dismissed cirrhosis and tuberculosis:

On the whole I cannot see any diagnosis more reasonable than your own. I have no experience of dengue, so that I cannot say even whether it is known to pass into such a chronic phase.

Hughes blamed Griffith's habits for his condition:

I have always marvelled that you were able to continue working at the pace you set yourself ... Men after all are human, and even a chief justice who does the work of three men during his working day and then by way of recreation translates Dante and solves abstruse problems in the higher mathematics — has his limits of endurance ... Be a little kind to your poor flesh.

Julia had always been told of any malaise, for instance "I began taking Sonatoyin this morning, but have been very well all the week" [26 Septem-
Likewise he always enquired as to her health, which may have been worse than his. She fell ill with pneumonia and pleurisy in 1917, was operated on on 25 October for pleurisy (fluid-pus), and had another operation on 11 November. Her asthma continued to trouble her: on 7 May 1914 "Julia very ill with asthma all night and heart attack all day. Drs. Bullmore and Blackburn here all afternoon. Dr. Bullmore all night". Griffith was sorry, on 10 October 1914, that she was "not much better. Perhaps your diet is not sufficiently attended to".59

The health of others was also important. Griffith was shaken by the death of his servant, Edward Whelpton in Sydney on 25 September 1914.60 He advised Barton after Edward’s death to obtain another opinion, as "the continued pain in his stomach may not be due to bad colic, but to something more serious". Barton had been lying up for some days with "excessive blood pressure", on which Griffith commented, "a little more might mean a stroke".61

Griffith, who had had relatively little contact with the Denmans, was once again to play a role in the government through his friendship with Lord Denman’s successor as governor-general, Sir Ronald Ferguson (Lord Novar). When Ferguson faced, in June 1914, a political crisis — a request for a double dissolution from the Liberal prime minister, Cook — he relied heavily on Griffith’s advice, describing him as "by far the most outstanding personage that I have met" in Australia.62 Griffith had first called on Ferguson on 30 May [Julia’s illness had kept him in Sydney till then]. The Fergusons, Sir Ronald and Lady Helen, lunched with Griffith on 3 June, "à trois" as he recorded. He returned with them to Government House for dinner, at which, his diary records, he advised Ferguson of

the full discretionary power it [the constitution] gives to the Governor-General to decide for or against a double dissolution irrespective of the advice tendered by his Ministers.63

Ferguson granted the double dissolution, and after the election asked Griffith to put his advice in writing. He advised that section 57 was an extraordinary power to be used only when either the governor-general was personally satisfied that the law on which the difference existed between the two Houses was "of such public importance" that it should be referred to the electors of both Houses, or when a double dissolution was the only way to solve the deadlock.

In deciding, the governor-general had to consider political factors: events since the last election; the state of the parties; whether the existing ministry would resign if a dissolution were refused; whether an alternative ministry could be formed without a dissolution; whether an election would give an "unfair advantage to any party".64 Ferguson’s decisions caused political fury, but Griffith escaped criticism.

Before the elections could be held, England declared war on Germany. Griffith, as a privy councillor, thereupon suggested to Ferguson that an Imperial bill be passed to give the governor-general the power to recall the dissolved parliament until the emergency was over.65 Ferguson was not enthusiastic and Cook was opposed. Griffith wanted the governor-general to take the initiative, believing that if he, as chief justice, propounded such a scheme, his actions might be misconstrued.
Griffith was not surprised to learn on 17 August that his idea had been rejected, blaming the idiosyncracies of some Australians and... the reluctance of Mr. Cook to take any action on his own part against the wish of some of his followers who anticipate a party triumph if the general election is held in September.66

He wanted his suggestion to be forwarded to the Colonial Office, but was not surprised when it was opposed. Labor under Fisher won the elections.

Griffith shared with Ferguson his disquiet with changes in Australia:

I am afraid that the cutting adrift from tradition has begun... it is not yet complete. But of late years the old traditions, which used to be regarded in Australia with almost superstitious reverence, are... either unknown to many persons into whose hands power has fallen, or, if known, regarded as obsolete.

These repeated his 1912 statements in Moorehead’s case, where he had deplored the loss of “the old fashioned, traditional and almost instinctive standard of fair play.67

In August 1916, Griffith theoretically considered the powers of the king and his delegates, after Ferguson referred him to A. B. Keith’s views in Imperial Unity and the Dominions. Griffith disagreed with Keith who, he believed, underestimated the powers of the sovereign in a system of responsible government; in Australia the governor was not a “mere cypher”, but could act on his personal views. When, for example, Governor Musgrave, in the Hopeful cases, had exercised the prerogative of mercy against the advice of his premier, Griffith was justified in not resigning, for the governor represented the whole of the people as distinguished from the party holding office for the time being.

Furthermore, if a governor believed

action proposed to be taken by his Ministers would be so detrimental to the welfare of the Empire or State that he ought not to allow it or some action not proposed to be taken by them would be essential to their welfare, it is not only within his power, but it is his duty to dismiss his Ministers provided, of course, that he can find others who will accept the responsibility.

Besides dissolutions, Griffith saw governors as having significant powers in matters of veto and in awarding honours.68

Ferguson was critical of Griffith’s argument in the 1915 Wheat case, and in his interpretation of section 92. Despite these disagreements, Ferguson continued to report Griffith’s views to the Colonial Office, for instance on the “White Australia” policy, which Griffith described as “an experiment and one that has not yet been proved to be a failure”.69

Griffith also discussed the use of coloured labour in the Northern Territory with Sir Henry Galway, South Australia’s new governor. They discovered mutual interests. Galway sent details of an Italian trilogy (by Fogazzaro) they had been discussing, and assured Griffith of friendship: “les amis de ses amis sont mes amis”. They were in regular correspondence until 1919.70

The vexed question of the relative standing of governor-general and governors continued in Ferguson’s years; he asked Griffith for advice.
When Fisher planned to resign as prime minister to become Australian high commissioner in London, Ferguson consulted Griffith. The didactic tone of his reply is reminiscent of Griffith's introductory speeches at the 1891 convention:

the political government of the Commonwealth is still in theory what is called "responsible government" and knows nothing of Caucus. All you know officially of Mr. Fisher is that he is a member of the Parliament whom you entrusted with the task of recommending suitable persons to be the "King's Ministers" of State for the Commonwealth, and on whose recommendations you appointed them. When he surrenders his office his recommendations would fall with it, which is commonly described by saying that the resignation of the Prime Minister carries that of his colleagues. Their successors will be appointed by you on the recommendation of some other person, though of course the motives which induce him to make the recommendation are not examinable.71

Fisher resigned his seat two months later, on 26 October 1915. Hughes, the deputy leader, was elected leader the same day, and caucus chose a new ministry. On the following day, Fisher resigned as prime minister and Ferguson commissioned Hughes, who allocated portfolios.

Privately, Griffith intervened successfully with Ferguson after a snub to his colleague Gavan Duffy.72 Officially, Ferguson was becoming more critical of Griffith and of Barton:

their personal bent is towards State rights and their views are less flexible than those of passing governments and changing electorates.73

Before Barton left London in November 1915 after sitting on the Judicial Committee of the Privy Council, he told Ferguson of British plans to change the system of Imperial appeals. When consulted, Griffith in Hobart on 5 January 1916 covered twenty-seven sheets with indignant protest. The problem was how to fit judges from the Empire into the existing system where the Imperial Court of Appeal consisted of two divisions: members of the legal profession in the House of Lords, who decided matters relating to the United Kingdom alone; and the Judicial Committee, consisting of the law lords and a selected number of other privy councillors, mostly active or retired judges, which decided wider Imperial issues. Griffith deplored "the old insular doctrine of the essential difference in quality between English and Colonial persons [which] is still regarded as axiomatic". Although never mentioned, it was as truly present as "the belief [in those who hold it] in ghosts haunting a churchyard or in original sin or any other inherited or instinctive sin of action". The English only believed in equality when it did not concern them. Griffith was writing as an Australian, rather than as a man born in Wales.

The Judicial Committee of the Privy Council was, he thought, regarded as the inferior court. Instead his claim on behalf of all the dominions was that the tribunal of appeal should be the same as that appointed for the inhabitants of the United Kingdom, with representatives from the dominions.

Griffith had become embittered by events. Some twenty years earlier a proposal to appoint members, including colonial lawyers, to the Judicial Committee set their salary at £5,000, less than the £6,000 paid to law lords, so stereotyping "the assumed inferiority of colonists"; no self-respecting
colonial judge would accept such terms. In 1913, when the question was revived, Griffith’s name had been “freely mentioned” as a future law lord:

I heard in the Mediterranean on my way to England on leave, and in London I was continually in all sorts of circles — political, legal, commercial and social — asked for information on the subject.

Before any offers were made, the proposed salaries were equalized, but it was simultaneously announced that choice would be limited to members of the United Kingdom bench: “the note of inferiority being withdrawn, the privilege, seemingly though grudgingly offered, was withdrawn with it”. Two new English judges were appointed.

While sitting on the Judicial Committee, Griffith discovered that it was alleged that each dominion wished to be represented, but strongly objected to representatives from the other dominions; a hierarchy of inferiority. He dispelled this belief as to New Zealand, and refused to accept it was true of the Union of South Africa or Canada.

Griffith urged the appointment of dominion judges on equality with English judges, and won Ferguson’s and Hughes’s support before he left for England in 1916. However, no changes were made and Griffith was to raise the question again in April 1918. It may have been as a result of this snub to the dominions that Griffith did not join the Round Table Committee, although he met with them and Lionel Curtis on 26 August and 29 September 1916. Griffith, however, was flattered when the British Academy elected him their first honorary fellow.

Meanwhile Griffith continued to be consulted by Ferguson, for although his body was frail, “his mind is active as ever”. For instance, on 19 May 1916, Griffith warned Ferguson that the validity of some of the war regulations was to be questioned before the High Court. As he believed it “would be a public calamity if the Court were compelled to pull down the whole fabric”, he saw it as “consistent with his duty to the Sovereign” to suggest that Ferguson warn the ministers. He made it even clearer that he was advocating intervention when he continued; “any help that I can give in framing necessary legislation is, as I told Mr. Hughes before he left for England, at the service of the Government”. Ferguson interviewed Griffith and advised the acting prime minister to communicate with Griffith “immediately”. Senator Pearce called on him that day “re War Precautions Bill”.

The governor-general’s wife also consulted the chief justice, the two of them vainly seeking a way out of a dilemma when a woman with a German name was nominated in August 1916 by the Queensland division of the Red Cross for service in England. Both feared to appear prejudiced, but disliked the subterfuge of advising her to use her maiden name. The families had become close. Ferguson sent Griffith gifts including a case of chianti and champagne.

In the coal strike of November–December 1916 Griffith offered, somewhat reluctantly, to intervene. He told Ferguson that “the employers as a class do not trust Mr. Justice Higgins to deal with them impartially; they have, I think, no such distrust of me”. He realised “that a large number of the worker class have been taught to regard me as an enemy, but I do not think that that attitude of mind would persist for half an hour after
meeting them”. Hughes claimed to have received Griffith’s offer too late, and had appointed Justice Edmunds from a New South Wales court.

In Griffith’s seventy-first year, on 16 March 1917, he collapsed with a stroke while in court. This was the climax of the crises of his later life. Ferguson was one of the first to visit him in hospital on 19 March, and again on 22 and 28. Griffith told Ferguson the High Court’s allowing a Queensland referendum on the abolition of its Legislative Council had been quite unconstitutional.

Griffith recuperated in Brisbane from May to October. He rejected an offer, originating with Premier Ryan and supported by Governor Sir Hamilton Goold-Adams, to become lieutenant-governor of Queensland. Ryan offered Griffith the inducement of a pension, believing that he as chief justice had been ‘‘harshly treated’’. Goold-Adams was to renew this offer on 28 July 1919.

During Griffith’s illness and enforced absence from the bench, he re-examined his 1889 proposals for solving the problem of the clash between labour and capital. In May 1916, he had sent copies of his 1890 bill to a Sydney correspondent, who encouraged him to revise his proposals:

unless some far-reaching and definite action is taken to draw capital and labour into true partnership now, the great sacrifices we have made for Europe, and the world’s peace will have been made in vain.

With such encouragement, Griffith redefined his ‘‘First Principles’’ later in 1916. These, which now numbered six, set out a programme for ensuring that the “product of human labour” was divided amongst workers “in proportion to the value of their contributions”. A state-appointed tribunal, which included representatives engaged in industry, was to settle disputes. Producers could demand reasonable profits.

In 1917, Griffith gave Goold-Adams and Ferguson expanded versions of his scheme. One addition was draconian: if arbitration failed in industrial disputes, civil rights should be withdrawn from those refusing to accept a settlement (“especially appropriate when the offence sought to be prevented is in the nature of usurpation of coercive power or rebellion against the government’’). He suggested imprisonment, or deprivation of the franchise.

In a paper entitled “Strikes”, dated August–October 1917, Griffith was more specific. Strikes, defined as “demands by three or more employees on their employers with a threat to stop work”, were to be made unlawful acts. Strikers in works of public utility (also carefully defined) were liable on conviction to deprivation of certain civil rights: voting at federal, state or municipal elections; being elected to any federal, state or municipal office; holding any commonwealth, state or territory public service office; bringing or maintaining any suit in any court of justice.

Another paper entitled “Outlawry” was even more drastic. It argued that “the existence of civilized society depends upon an implied agreement that the members of it will submit to certain rules and obligations imposed upon them”. For those who did not submit, the common law of England had instituted “outlawry”, whereby the person was deprived of rights by recourse to courts. If a large number combined against society, the result was revolution. Any deliberate interference with public utilities fell within
the principle. It was for the legislature to determine the extent and conditions of deprivation (in passing he noted that up until Edward III’s reign, an outlaw ‘might be killed with impunity’).

Griffith sent his papers to Ferguson in September, commenting: ‘when appeals to duty fail the only remedy seems to lie in making it plain that the consequence of such rebellion will be immediately certainly disastrous to the rebels themselves’. Ferguson showed the suggestions to Hughes, who ‘contemplated no action on the lines you suggest’.

During Hughes’s dramatic Queensland pro-conscription campaign in November 1917, Griffith spoke to Hughes on the telephone on the 27th, and on the next two days saw ‘P. B. MacGregor for Hughes’. Had Griffith advised Hughes on his rights against Ryan? Legal action by the commonwealth against Ryan and Theodore, and by Ryan against Hughes, followed. Ryan’s action, for contempt of court, was referred by Barton to the Full Court, then adjourned to 1 April, Griffith remarking that the Greek Kalends or the Day of Judgment would be equally suitable.

The government, with Ferguson’s approval, entrusted Griffith on 7 March 1918 with a royal commission into recruiting and reinforcements for the Australian Imperial Force. This followed the defeats of the conscription referenda. It was a brief enquiry: Griffith sat on the eighth and the eleventh, completing his draft report two days later. Griffith was assisted by Major-General J. Legge. No evidence additional to that supplied by the Defence Department was considered.

Griffith’s report, which assumed the war would continue throughout 1918, began with the enlistment figures to the end of 1917. The numbers to keep strength up to the present overseas level (207,672) ‘cannot be foretold with certainty. The only light seems to be that afforded by the past’. During 1917, 51,639 soldiers had left the army (through death, injury, imprisonment or repatriation), an average of 4,300 a month. As the course of training before embarkation took four months, Griffith calculated that about 17,000 men should be in training at any one time. To meet ‘improbable heavy losses’ an extra 30,000 would be needed, raising the total to 47,000. At 1 January 1918, just over 20,000 reinforcements were available overseas, leaving a deficiency of 27,000. As 18 per cent fewer embarked than enlisted, the number of enlistments should exceed the number of required reinforcements by about 25 per cent. So the enlistments to replace average wastage would need to be about 5,400 a month in addition to the numbers required to make up the present deficiency — 27,000 plus 25 per cent — a total of 34,000.

The minister for defence, Senator George Pearce, commented that it was ‘obviously futile’ to attempt to provide an extra 30,000, and optimistic to expect at least 5,400 recruits per month. This figure was less than the 7,000 Hughes had estimated in the second referendum campaign, which may have been, Pearce suggested, because it was hoped at that time to keep the depots in England filled and not withdraw one of the divisions from the field. He pointed out that Griffith’s estimates required more than 7,000 to cover wastage and provide the reserve of 30,444. Griffith’s intervention had little practical effect.

In June 1918, the commonwealth began proceedings against seven members of the Irish Republican Brotherhood (Sinn Fein). It decided that the
chief justice (or Powers, if Griffith were too ill) should preside over a tribunal to consider whether the evidence was sufficient to justify the arrests. Watt, as acting prime minister, telegraphed Griffith in Brisbane on 2 July. Griffith at first accepted, and suggested a date, but also said he would prefer that Powers preside. After seeing Powers, Griffith changed his mind: he now believed the government could not by regulation confer jurisdiction on the High Court "to decide as to the propriety or expediency of proposal or actual administrative action". He suggested as an alternative that a formal request could be made from one privy councillor (Hughes) to another (himself) for aid, in which case he was prepared to give advice. Watt proposed instead to substitute in the proposed regulation "any person" for "a judge", and then to appoint a judge. Griffith described this as a "piece of political strategy liable . . . to injure the prestige of the Judiciary".

Griffith believed internment and detention of aliens under suspicion was an "act of war . . . of which celerity and secrecy . . . [were] necessary attributes". Hence it was a military, not a judicial, process, which should not be "fettered by any technical rules of evidence". Any tribunal would either be part of the military function, or be the expression of "a mere pious opinion". He advised the government that all of the accused should be told by the minister of the charges against them, and allowed to respond. This evidence could then be considered by a judicial person in camera acting to assist the minister, which would be quite different from a public inquiry and public disclosure of facts relating to military policy.

Knowles, the acting solicitor-general, was sent to Brisbane to explain to Griffith the government's views. An interview on 17 July did not resolve the issue. Barton suggested a conference of the judges of the High Court in Sydney. Griffith agreed, and at this meeting (in his absence), the judges endorsed his view that the High Court should not be involved. Subsequently the New South Wales government appointed a judge of its Supreme Court to consider the evidence.91

Griffith's decline in health by 1918 had become a matter of national concern. Ferguson in September knew that recent cases "must have tried the remaining strength of the Chief Justice".92 Ferguson had supported attempts to give Griffith pension rights, as had Hughes. The legal profession was very specific: "it must be made possible for judges to vacate their office without fear of financial difficulties".93 Late in 1918, an act was passed in the federal parliament to provide a pension of £1,750 a year for Griffith. Griffith believed the action had been delayed by "the subterranean antagonism of a colleague",94 almost certainly referring to Isaacs.

When the High Court first sat after the armistice, Griffith looked forward to the future with "confidence and hope".

There have been many wars, but none in which the welfare of so large a portion of the human race was vitally at stake for so long a time, or from which such grave consequences were likely to follow. As this fact has impressed itself more and more deeply on our minds, we have sometimes been disposed to lose confidence when we regarded the apparent indifference, and, indeed, the scarcely veiled hostility, of many of those whose welfare is so closely bound up with our own.

Griffith may have been referring to the Labor party's Perth conference, at
which the war had been condemned as a "capitalists' war", but his conclusion applied more generally:

If, after a long and not inactive or unobservant life, I may say what to me appears the matter most urgently calling for treatment; it is the question of the mutual relations of the people of a State to one another. The old deeply rooted idea of division into classes, who are natural enemies, and whose destiny and duty are to prey upon each other, must give place to the sense of equality and of the paramount duty of every man to bear his part of the load of his neighbours' burdens as well as of his own. I know that a radical change of mental attitude, not in one part only of the community, is essential to a wise performance of this task — but I do not despair of the result.*

To this end, Griffith republished his 1889-90 schemes to devise laws to control the relations between employers and employees. He also continued to revise his "principles upon which the industrial civilization of the future must be founded". He sent Ferguson in April 1919 a document headed "Labour and Property", with twenty-two principles that closely resembled his 1889 views. "Labour" and "property" were defined and incidents of ownership and productive labour described, followed by an analysis of the rewards for labour-wages, including a minimum ("never . . . less than enough to maintain the labourer and his family in a state of health and reasonable comfort"). He tried again to devise a formula for distributing the products of labour. If the formula were unsuccessful, he proposed that a state tribunal decide both this matter and arguments about labour operations. Griffith propounded a duty to work and to make property useful — with a state tribunal to decide breaches after the legislature had provided appropriate laws.96

On 17 May 1919 Griffith collapsed in his study, and on 17 June he sent in his resignation as from 31 July. The attorney-general, Littleton Groom, accepted this date, but then extended it for a month to give federal cabinet time to decide on a replacement. Griffith agreed to a further month's extension on 25 August.

A ceremony was arranged at the Brisbane sittings of the High Court on 25 July to bid Griffith farewell. It proved to be anti-climactic: Griffith's doctor (Hardie) refused him permission to attend, so the principal registrar read his prepared farewell speech in which he hoped, with Othello, to "have done the State some service in my time". Barton was also, on medical advice, disappointingly absent (privately he had told Griffith he anticipated "indescribable loneliness" in the cases to come after his "great chief" had retired). Isaacs read Barton's farewell praise of Griffith's "ceaseless devotion . . . unwearied labour and . . . matchless ability" and description of him as "a watchful guardian of the Constitution, conserving to Commonwealth and State alike the powers which that instrument of government allots to them". Isaacs, on behalf of himself, Gavan Duffy and Rich (who were present) and Higgins and Powers (who were not), expressed their regret at the loss of their "honoured and distinguished leader" whose "great talents . . . ripe experience and . . . erudition" would be missed.

Littleton Groom had been detained by urgent business, so his tribute was read by T. J. Ryan, Queensland's attorney-general, who also added his own. Groom wrote of the chief justice's "strictest impartiality, great
research and learning and a judgement ripened by a wide experience", and Ryan referred to the "unfailing courtesy and encouragement which he always extended to young practitioners". Finally, A. H. H. M. Feez of the Queensland bar spoke on behalf of the southern bars (unable to attend because "the valedictory ceremony takes place before they have had sufficient notification of it") and as a personal friend. Feez described Griffith as being "as nearly indispensable in his office as any man could be . . . we do not envy the onerousness of the task of his successor."97

Who was this to be? Griffith, who was consulted by Hughes, was deeply concerned "that the Court will not lose the respect and confidence of the public". The eventual choice was Sir Adrian Knox, appointed from 18 October, Griffith's term having been extended to 17 October. Griffith had favoured Knox over Barton and Isaacs. Barton was deeply disappointed, believing Griffith's "dominant desire was to requite in deadly fashion the man [Isaacs] who had injured him, and that to make this certain he did not care if he killed the man [Barton] who had helped him".98 Ferguson, while agreeing that Griffith had been harsh on Barton, argued that Griffith had wanted "to secure at all costs the utmost measure of stability for the High Court". He partly excused his treatment of Barton: "at so advanced an age personal affections in most men . . . become faint".99

Griffith's concern for stability arose from his experiences of the divided bench. During his fourteen years, he had heard some 950 reported cases, an average of 68 a year. Since 1914, there had been sharp division, particularly in constitutional and arbitration cases, but also in other hearings. Duffy, who believed Griffith had helped reduce the friction by his "capability of forgetting little irritations", wrote to him after Knox was appointed: "I need not tell you that he has come to command a set of feudal barons, not an army staff".100

In his final year, Griffith turned again to developing his long-range solution for society's ills. His farewell message to the High Court had mentioned his hope "to make an occasional contribution to the solution of the social problems by which we are confronted" as the "whole civilized world [was] threatened with the crudest and most uninstructed forms of revolution". In August 1919, he completed an essay called "The Social Problem", copies of which he sent to Ferguson, Archbishop Donaldson, and others.101 It was published in newspapers in Sydney and Melbourne.

The essay began: "Every sentient living creature . . . is equally subject to an unformulated and unknown law which it is unconsciously bound to obey", yet, "All we like sheep have gone astray", and the return to the "right way may be long and painful".

He generalised about "civilized" countries — those whose members had emerged from jungle conditions. The origin and obligations of the state rested, in the long view, "upon the consent of its members". Each member was subject to subconscious but prevailing rules of right and wrong, the rules of the community — analogous to bees in a hive, or ants — and he quoted, "Turn to the ant thou sluggard, consider her ways and be wise".

A man's acts were governed partly by his environment, partly by his conscious or unconscious motives. In every case, the action was a means to attain some end: "When I was a boy I was told by a very wise man that wisdom is the adaptation of means to ends". If "Evil be thou my good"
had become the unconscious rule of the community, it would act accordingly. He urged that community rules based on power be abandoned, and replaced with rules based on fraternity.

Griffith then restated the twenty-two propositions that he had tried to express in legislation thirty years before, admitting that he had then anticipated too much from their mere formulation, and that he had had no subsequent political opportunity to introduce or even advocate them.

His conclusion echoed the biblical faith of his father:

I have not touched on theological, legislative or international aspects. The analogy between these propositions and the doctrines of some of the earliest religions supposed to rest on different bases is apparent e.g. ‘Love thy neighbour as thyself’; ‘Ye must be born again’.

Readers of Griffith’s analysis could do no more with it than had the Queensland parliament in 1889. One anonymous critic responded with a pessimistic defence of the competitive free enterprise system against Griffith’s essentially optimistic cooperative vision. He argued from the “New Australia” experiment:

Lane . . . realised after actual experience that such an enterprise needs the heart of a Christ and the brain of a Jay Gould, and the organizing genius of a Napoleon — master rule in excelsis.\(^{102}\)

Duffy was politely noncommittal: “I see by the newspapers that you have been going back to your old love, social statics and dynamics”, while Hughes was more positive: “I agree with . . . most if not all of it, above all . . . your breadth of vision and your sanity of judgement”.\(^{103}\)

Griffith hardly left “Merthyr” after 18 July 1919. On 3 September, he paid the last £1,000 owing on the house to Mesdames Halls’ Trustees. On 30 October, he arranged for the land to be subdivided and its river frontages sold (they were auctioned on 29 November).\(^{104}\)

He remained obsessed by his degenerating health, which he partly blamed on the atmosphere of the High Court in his last years as chief justice:

there is no doubt that this change, though I cannot say it was the cause of my illness, had very great effect in reducing my power of resistance to the deadly microbes which attacked my strength.\(^{105}\)

Many diary entries referred to his health: “fell against window in dressing room when going to bed. Bad shock”; “very stiff and helpless”; “very short of breath”; “weakness continuous blood infected by long fever [without discovery]”; “legs quite impotent in morning”; “gastric disturbance. Legs quite helpless”; and, on 1 December 1919, the last entry, “brain very weary”. A letter he dictated to his cousin on 27 December amplified these brief entries:

I was told that my affliction was very much a nervous breakdown (and so it seemed) that I should improve as all sources of anxiety were removed, but the event has not been so . . . I seem to myself to be steadily retrograding.

It is with difficulty at present that I can move half-a-dozen steps on my feet and my head is beginning to get tired. There is no doubt that the nerves had a great deal to do with my breakdown, no doubt I was suffering from over work
Griffith as an old man.
(Courtesy of the Mitchell Library.)
for which I got no sympathy from some of my colleagues but rather the 
reverse . . .

At present I feel very useless but am still not without hope.\textsuperscript{106}

The conclusion was a paraphrase of the Griffith family motto.

It was mooted that Knox, the new chief justice, should become a privy 
councillor, one suggestion being that Griffith should resign. On 16 Septem­
ber 1919, Griffith returned his Privy Council court dress and silk gown to 
London. Arrangements for this transfer may have been the reason Hughes 
was to see Griffith on 25 November 1919, but the old man was to be 
grievously disappointed: "sat in Hall all morning awaiting W. M. Hughes 
P.M. who failed to keep appn [appointment]".\textsuperscript{107}

Griffith still tried to do his duty as a responsible citizen, exercising by 
post his voting rights at the 1919 December elections (which again 
returned Hughes). Griffith, despite the November snub, probably voted for 
Hughes, whom he believed had beaten "the combined forces of Sinn 
Feinism, Clericalism and Bolshevism of which I was for some time afraid 
. . . I have some hope now of the future".\textsuperscript{108}

Most vestiges of Griffith's influence had disappeared on his resignation. 
Ferguson kept in touch, although he knew by February 1920 that Griffith’s 
family held no hope of his recovery. When Griffith enquired about pro­
gress in the negotiations for dominion representation on courts of appeal, 
Ferguson promised to make representations to the secretary of state for the 
colonies. He told Griffith their association "will always be one of my 
happiest recollections".\textsuperscript{109}

It is doubtful whether Griffith had much hope left: Barton (who had once 
wondered if he could make Griffith laugh) had jokingly warned Ferguson 
in 1915: "the presence . . . of my learned chief will continue to you the mild 
titillations of his frequent questions \textit{de omnibus rebus et etc.}".\textsuperscript{110} Did Griffith 
in his last years perceive that he was in danger of becoming a bore, con­
centrating on outdated trivialities? Did he realise that his solution of the 
social problem had been received in virtual silence? How much did 
Hughes's snub hurt him?

Duffy and Rich sent greetings for Griffith's seventy-fifth birthday on 21 
June 1920; a Sydney judge (Pring) and the governor-general, Ferguson, 
remembered by telegram the fiftieth wedding anniversary of the Griffiths 
on 5 July. Griffith's acknowledgments, probably written by his daughter, 
were almost his last public acts.\textsuperscript{111} Few others besides family were left to 
remember; William MacGregor had died on 3 July 1919; Alfred Deakin on 
7 October 1919; Edmund Barton on 7 January 1920.

At 10 a.m. on 9 August 1920, Griffith died. His doctor recorded four 
causes: cerebral haemorrhage for three years; congestion of lungs for six 
months; heart failure for four days; and arterio-sclerosis for an indetermi­
nate period.\textsuperscript{112}

Ferguson expressed to Julia, who was to live for another five years, his 
regret in losing "so true a friend and wise a counsellor".\textsuperscript{113} Griffith had 
hoped to be remembered for his service to the state and for maintaining 
the prestige and honour of the High Court. One immediate verdict on his 
contribution to the High Court was the \textit{Engineers' case} judgement, delivered 
in the month he died, reversing a central part of the work of his chief 
justiceship. Isaacs's epitaph in the judgment was that Griffith's views of
implied immunity had led to "divergences and inconsistencies more and more pronounced as the decisions accumulate", while experience of implied prohibitions had proved the "elusiveness and the inaccuracy of the doctrine as a legal standard". Yet, just as the legal profession had found much to praise at his farewell ceremony, so did many posthumous plaudits record his undeniable contribution in all fields of law. All agreed he had worthily established and maintained the reputation of the High Court.

Griffith's will, drawn up on 17 November 1917, with two codicils added in 1919, made a straightforward division among his family. He left £500 to his wife and £100 to his sister Mary for their immediate requirements free of duty. His trustees (his son and sons-in-law) were to convert his real and personal estate into money, and pay the annual income to his wife during her lifetime. On her death it was to be divided among his children: one-third to his surviving son, one-sixth to each of his four daughters. The first codicil varied the proportions: Percy was to receive one-quarter, his two unmarried daughters Nellie and Gwen one-quarter each, and his two married daughters one-eighth each. It also allowed Julia to dispose of any books, pictures, furniture or personal effects from his Sydney or Brisbane residences. The second codicil changed the proportions again: Percy went back to his original one-third, the unmarried daughters to two-ninths each, the married one-ninth each. It also provided — in fact unnecessarily — for the distribution among his grandchildren of the share of any of his children who had died in his lifetime.

There were no problems distributing his estate, which consisted of "Merthyr" (valued at £15,326 on 13 September 1920), and perhaps an interest in the "Albany", and his personal estate (valued on 21 February 1921 at £10,905.10.0). The main item of the last was debts totalling £4,630. This was followed by debentures worth £2,790 (Griffith had acquired £3,000 of 4½ per cent war loan stock due in 1927, valued at 93 per cent); furniture and other goods at Sydney (worth £1,005), a life policy with M.L.C. for £1,000, £659 on current accounts, £155 worth of furniture and books at New Farm, and £100 rent due from Eveline. His debts were small, a doctor's bill being the largest (£254). An order dispensing with the filing and passing of accounts was made on 17 February 1922.

In 1919, besides selling part of the "Merthyr" property, Griffith had donated a box of "diaries and papers to Mitchell Library" (now stored in the Dixson library), given books to the Sydney University Fisher library (still noted on bookplates), and sold books to the Law Book Company. He also destroyed some of his letters and papers.

Griffith had been well prepared for death: he had been an invalid since his stroke in 1917, and most of his friends were either similarly afflicted or already dead, as seemed so many of the values he had revered. Law and order had been his masters, but rebellion and violence seemed, to him, to have replaced these in the world after August 1914. His vision of a world reorganised by reason and unconscious principles of right conduct, controlled by tribunals appointed by the state, seemed a fantasy. Appropriately, the last part of the *Inferno* he recorded revising on 11 November 1919, the first anniversary of the armistice, was Canto 28:
who could ever
Tell of the blood and of the wounds with fullness
That I now saw, though many times narrating?
All tongues of men would fall far short, of surety,
By reason of our speech and understanding,
Which have scant bosom for such comprehension

Cleft in the face from chin unto the forelock.
And all the rest of those whom here thou see'st,
When living, were the sowers of dissension
And schism; and therefore in this wise are cloven.\textsuperscript{118}

In his last days at "Merthyr", perhaps Dante's visions became tame compared with argumentative justices, a defaulting prime minister and unreasonable citizens. The world of the nineteenth century liberal legal reformer had indeed vanished.
Notes

Abbreviations

ALF       Australian Labour Federation
Chief Sec. Chief Secretary
Col. Off. Colonial Office
Col. Sec. Colonial Secretary
JG        Julia Griffith
JLM       Jeanie Lucinda Musgrave
NSW       New South Wales
QLJ       Queensland Law Journal Reports
QPD       Queensland Parliamentary Debates
QSA       Queensland State Archives
QSCR      Queensland Supreme Court Reports
QSR       Queensland State Reports
S. of S.  Secretary of State for the Colonies
SWG       Samuel Walker Griffith
TLC       Trades and Labour Council

Chapter 1. Foundations

1. Alexander Pope, "To Mrs M. Blount", l. 207; the quotation is apposite for a chapter on
the first 22 years of SWG's life and the "passions" inherited from his father; I argue
implicitly that SWG had some compulsive characteristics, which even approached the
neurotic behaviour of an arrogant-vindictive type; see K. Horney, Neurosis and Human
Growth, pp. 29, 193, 197-212, and 315-16; A. F. Davies, Skills, outlooks and passions,
part three; see chap. 1 note 100, chap. 3 note 67, chap. 4 note 1, below.
2. SWG diary, 18 Sept. 1866, MSQ 194, Dixson Library [diary]; Report on T. S. Mort
Travelling Fellowship, MS 145, p. 277.
3. His father's career is outlined in Mary Griffith, Memorials of the Rev Edward Griffith;
born in Bath in 1819, he moved to Frome where he worked for a chemist and his father,
William, a wine merchant; after a religious conversion at seventeen he joined the Con­
gregational [Independent] church in 1836; he was trained at Fakenham and Highbury,
where he was recorded by the 1841 British census records; his wife Mary was the daughter of Peter, a draper; their wedding at Castle Street Chapel Swansea was celebrated "according to the Rites and ceremonies of the Independents"; Edward was minister of the English Independent, or Market Square, Chapel in Merthyr Tydfil, a building 52' x 62' opened in 1841.


5. Ibid., 15 Apr. 1843; during a debate on the educational clauses of a factories bill where the Church of England's "Clericus" and "Veritas" opposed Edward Griffith.

6. Ibid., 27 Apr., 18 and 25 May 1844.

7. Ibid., 7 Sept. 1844; during a debate about cheap railway fares on Sundays; all Griffith's statements may not have been reported by this conservative paper, which opposed Chartism.

8. Ibid., 22 Apr. 1843.


11. The residence attached to the chapel has a view over the town; during Edward's 41 months' service (10 June 1846 to 17 Nov. 1849) young Edward reached his sixth birthday, Samuel his fourth; Mary's birth delayed their move.

12. *Weston-super-mare Gazette and General Advertiser*, 18 Dec. 1848; see also 15 July 1846, 3 June 1848, 28 July 1849; records of the Portishead Independent Chapel could not be located in 1978; at which date the chapel completed on West Hill by 1845 had become a Moose Hall; it is about 400 sq. ft compared to the 3224 sq. ft of the Meythyr chapel; Edward opened a chapel in the village of Weston-in-Gordans, see Griffith, *Memorials*, p. 12.

13. Church records at Wiveliscombe Congregational Church cover Edward's term from 18 Nov. 1849 to 31 July 1853; the chapel on Golden Hill is about 1,900 sq. ft; the new residence in Church Street, near the Church of England St Andrews, is described in detail in an inventory by the War Department's Land Agent, 5 Sept. 1940.

14. Mary Griffith to Samuel Griffith, n.d., but almost certainly after Alice's birth (10 May 1851); the alternative is after Mary's birth (4 Nov. 1849), MSS 363/2X, Mitchell Library.

15. Both quotations from Mary Griffith to Samuel Griffith, June 1851; his father also urged him "to serve and worship God", Edward Griffith to Samuel Griffith, 20 June 1851, ibid.


18. "My boy Sam, by the time he was seven years of age had read every book in my library, I used to lock the door to keep him out", G. Woolnough, editor, *Brisbane Telegraph*, cited A. D. Graham, *The Life of the Right Honourable Samuel Griffith*, p. 5; on the same page Graham cites Samuel at the age of eight taking notes on Dr Nelson's sermon.

19. Deduced from letter Aunt Lydia (Walker) to SWG, n.d., MSS 363/2X, pp. 73-76, Mitchell Library.


24. Minutes of Wiveliscombe Congregational Church, 27 Apr. 1853.


27. From address at valedictory service, Griffith, *Memorials*, p. 65.


Notes to pages 4-13

30. Ibid., pp. 17-18.
31. Ibid., p. 18.
33. This was an unhappy pastorate; see E. Griffith to the Church, 24 May 1856, “The reasons which prevented me from resuming the Pastorate in February [1855] exist with equal force now”, Ipswich Central Congregational Church Minute Book, 1853-1864; no hint of the disagreements is given in Griffith, *Memorials*, pp. 18-20.
35. Petty Cash book, 1854-58, MSS 363/1X, Item I.
41. Ibid., 26 May 1860.
42. Ibid., 30 Oct. 1858 [games of skill]. He lectured on Queen Elizabeth and Queen Victoria, ibid., 93 and 18 Aug. 1857, and on three hundred years ago, ibid., 19 June, 3 July 1858, ibid., 20 Apr. 1858 [Indian mutiny]; Griffith, *Memorials*, pp. 23-25.
43. Wharf Street Congregational Church, Brisbane, Minutes of Church Meetings, 1860-91.
44. See note 35 above.
47. R. J. Somerville to SWG, 7 Aug. 1901, MSQ 190, pp. 349-52; for School Essays, OM 64-10, Oxley Memorial Library.
50. C. S. Mein, b. Maitland 1841, may have known Griffith there; he attended Sydney Grammar School from 1857 to 1859; McIntyre to SWG, 13 Feb. 1862, MSQ 185, pp. 2-3, Dixon Library; *Maitland Mercury*, 6 Oct. 1860, Sydney University Calendars, 1860-63; Register of Fees 1860-63; Matriculation Register 1859, Sydney University Archives.
51. Griffith papers, OM 64-10-S11, Oxley Memorial Library.
52. Sydney University Calendar, 1862, p. 118.
53. SWG diary, 26 Apr. 1862, MSQ 194, 1, Dixon Library.
54. Ibid., 17 May 1862; Cooper scholarships had only been awarded in 1854, 1855 and 1857.
56. SWG diary, 5 Mar. 1862.
57. Ibid., at back after 31 Dec. 1862. The books probably were J. F. W. Herschel's *Astronomy*, published in 1883, and two titles from H. Bohn’s *Scientific Library*, though no exact equivalent appears in the 1864 *English Catalogue of Books* (1835-63), pp. 75, 878.
58. Ibid., 8 Feb. and 2 May.
60. SWG diary, entries for Jan. 1862.
61. Graham, *Life*, p. 7; the *Charley Chalk* articles appeared in the *Queensland Guardian* between 1 Jan. and 29 Apr. 1862; quotations from Herbert [1 Jan.]; Chubb [15 Feb.]; Macalister [8 Mar.]; and Jones [8 Feb.].
62. SWG draft to trustees Ipswich Grammar School 14 July 1863; S. Hawthorne to SWG, 4 June 1863; H. Challinor, Chairman trustees I.G.S. to SWG, 23 July 1863; MSQ 185, pp. 4-11.
63. SWG to Ian Stockwell, Associate to Chief Justice, 7 Sept. 1865, SCT/CKS, QSA; Articles, 11 May 1863, and associated correspondence in Files Relating to Articled Clerks, Book 1, 1863-71, SCT/E02.
64. Details from SWG diaries 1863-64, MSQ 194.
65. SWG, MSQ 184, p. 73; also Edward Griffith to SWG, 6 Jan. 1864, MSQ 184, pp. 45-48.
66. Pilcher lived in East Maitland and had been at Sydney University with SWG; Charles Pilcher to SWG, 9 Feb. 1864, MSQ 184, pp. 55-58.
67. Healy lived in West Maitland and had been at Sydney University with SWG; Patrick Healy to SWG, 6 Oct. 1863, 24 Nov. 1863, 31 Mar. 1864, 9 Aug. 1864 and 19 Nov. 1864, MSQ 184, pp. 42-43, 49-51, 52-54, 63-65, 66-71.
68. Edward Griffith to SWG, 15 Apr. 1866, MSQ 184, pp. 277-81.
69. Patrick Healy to SWG, 12 Sept. 1865, MSQ 184, pp. 93-96.
70. Interview, SWG, Australasian, 29 July 1895; details of scholarship from Sydney University Calendar; Patrick Healy to SWG, 19 Nov. 1864, MSQ 184, pp. 68-72; Hugh Kennedy (Registrar Sydney University) to SWG, 11 Feb. 1865, and 16 Sept. 1865, MSQ 185, pp. 12-13, 15-16.
71. Patrick Healy to SWG, 17 June 1865, MSQ 184, pp. 75-78.
73. See note 63 above.
74. SWG to Attorney-General, 20 Sept. 1865, SCT/CK5.
75. Mary Griffith to SWG, 9 Oct. 1865, MSQ 184, pp. 233-36.
76. Edward Griffith to SWG, 15 Apr. 1866, MSQ 184, pp. 277-81.
77. Details from SWG, diaries for 1865-67.
78. SWG, T. S. Mort Travelling Fellowship, Report of European Tour, MS 145.
80. W. W. Macalister to SWG, 12 July 1866, 18 Aug. 1866, 1 Nov. 1866, MSQ 184, pp. 143-44, 177-79, 202-4; Ann Macalister to SWG, 2 July 1866, MSQ 184, pp. 146-49; Wesley Tom to SWG, 26 Oct. 1866, MSQ 184, pp. 188-91.
81. Edward Griffith to SWG, 18 May 1866, MSQ 184, pp. 295-98.
82. Eliza Mary Griffith to SWG, 15 Sept. 1866; n.d. (Sept. 1866); 6 Oct. 1866, 8 Nov. 1866, MSQ 184, pp. 351-54, 355-58, 359-61, 362-65 and 8 May 1867, MSS 363/2X, pp. 89-96.
84. Mary Griffith to SWG, 16 May 1866, MSQ 184, pp. 283-86.
85. Ibid.
86. SWG, diary, 11 Oct. 1866.
88. Haywood Smith to SWG, 3 Nov. 1866, MSQ 185, pp. 26-29.
89. From Edward’s letters to SWG, see note 79 above.
90. Edward Griffith to SWG, 17 June 1866, MSQ 184, pp. 301-4.
91. Griffith, Memorials, and Mary Griffith to SWG, 10 Jan. 1866, 17 May 1866, MSQ 184, pp. 247-50, 291-94.
92. Mary Griffith to SWG, 14 Nov. 1865, MSQ 184, pp. 229-32.
95. Mary Griffith to SWG, 13 Mar., 1866; 13 Feb. 1866; 18 June 1866, MSQ 184, pp. 269-72, 265-68, 305-76.
96. Ibid., 15 Apr. 1866, MSQ 184, pp. 277-81.
97. Ibid., 15 Apr. 1866, MSQ 184, pp. 283-86.
98. Edward Griffith to SWG, 13 Jan. 1866, MSQ 184, pp. 251-52.
100. W. T. Blakeney to SWG, 22 July 1865, MSQ 184, p. 82; this “anger” is a clue to Griffith’s personality, see Horney, Neurosis, p. 316.
Chapter 2. Early Career

1. Alexander Pope, "An Essay on Man", I. 13; even if Griffith’s confusion were partly resolved by his marriage, the ‘passions’ of his twenties remained chaotic during his upward career in law and politics.

2. SWG annual diaries (1867–74) used throughout this chapter for details of dates, names and movements; minutes of Meeting of Board of Examiners, 7 Oct. 1867 and SWG to I. N. Wilkie, secretary to the Crown Law Offices, 16 Sept. and 4 Oct. 1867 (which includes testimonials from Rev. T. Mowbray, C. Lilley and I. M. Shaw); Papers respecting the admission of persons to practise as barristers, SCT/CK13, QSA.

3. He celebrated by dining with Mein on 14 October; diary 1867; and Graham, Life, p. 11.

4. These were the three mentioned by Griffith’s father, see chap. 1, note 98 above; they did not join the bar; Graham names the barristers, Life, p. 13; see W. Ross Johnston, History of the Queensland Bar, pp. 4, 105–8.

5. For a sketch of genial ‘Georgie’, see Johnston, Queensland Bar, pp. 97–98.


7. Speculation is possible from these choices: for instance did he identify Kingsley’s Ayacamora with his search for an ideal woman?; his tastes were to change; Graham reports of Griffith in the 1890s: “he read, always something in French. I never remember seeing him read an English novel”, Life, pp. 87–88.

8. Entry for 5 Nov. 1867.

9. Figures calculated from diary entries, which also mention insurance payments and gifts; Mary was 21 on 4 Nov. 1870, Alice 19 on 10 May 1870.

10. During his 305 months as a barrister (Oct. 1867–Mar. 1893) he appeared in 280 cases in the Supreme Court; in 144 of these his clients gained a favourable verdict; figures calculated from QSCR 1867–81 and QLJ 1881–93.


12. Diary, 25 Mar. 1868; this was at the unreported Rockhampton Assizes trial, 16–25 Mar.; Griffith also appeared in the subsequent unsuccessful appeals before the Supreme Court, at Rockhampton on 12 and 15 May 1868. R. v. Griffin, QSCR, 1, 176.

13. Diary, 16 Oct. 1869; Murray was presumably a solicitor; Griffin’s skull was macabrely stolen from his grave and later displayed in Rockhampton; Griffith appeared for the Crown in this 1869 case R. v. Williams, one of those accused of murdering Halligan, a gold buyer; Griffith also appeared in the trials of two others (Palmer and Archibald); he also appeared for the Crown when one appeal reached the Supreme Court on 8 Dec. 1869 R. v. Archibald, QSCR, 11, 47; the issue was whether a confession was voluntary; all three were executed; for an indication of stress on violence see Table of Events in J. J. Knight, In the Early Days, pp. 367–68.

14. An unreported case; for a sketch of Isidor J. Blake, see Johnston, Queensland Bar, pp. 45–46; for Baird, a barrister enrolled after Griffith, see note 18 below.


18. SWG dairy, 20 Apr. 1867; for Mein see chap. 1 note 50; he worked as private secretary to the NSW attorney-general before returning to Brisbane in 1867, where he was articled to Hart and Flower; he was admitted as a solicitor on 16 Dec. 1870; Hely is mentioned by Johnston, Queensland Bar, p. 97, who does not list Baird; Griffith records his admission in his diary.

19. Most of his views are unknown, insofar as the societies were secret; thus his future brother-in-law wrote: ‘I would never think of joining any secret society...’ F.A.A. Wilson to SWG, 20 Mar. 1870, MSS 363/2X, pp. 50–3; many of Griffith’s masonic certificates are retained in his papers; he was admitted to freemasonry on 22 Aug. 1865 (5865 in masonic form), in the Brisbane Victoria Lodge of the United Grand Lodge of...
Ancient Free and Accepted Masons of England; he was admitted to the third degree of this Victoria Lodge on 12 Sept. 1865; he became a Mark Master of Brisbane's St George's Lodge of the Grand Lodge of England and Wales on 5 Feb. 1869; he became a Royal Arch-Mason in the Brisbane North Australian branch on 18 Mar. 1869; he became a Mark Master (enrolled in the Supreme Chapter Edinburgh) on 25 Mar. 1870; he was appointed for a year as District Senior Grand Warden in the Grand Lodge of Ancient Free and Accepted Masons of Queensland on 6 March 1872; an Excellent Master Mason on 25 March 1870; he became Knight Commander of the Order of Masonic Knights Templar of England and Wales on 3 Mar. 1870; he became a Knight of Malta in the Masonic Knights Hospitallers of St John of Jerusalem on 16 Dec. 1874, MSS 363/12X.

Following the example of his father, as in Maitland.

Smith spoke on 20 June 1870.

Diaries record his visits; e.g., on 23 Jan. 1868 'examined papers with Hawthorn for scholarship till 1 am'; Brisbane Grammar School opened on 1 Feb. 1869; Griffith records examining there on 26 Feb. 1870, and election as a trustee on 14 Jan. 1871.

That night he dreamed of Etta and, recollecting a dream just a year before while he was on his way to England, he wrote two Latin epigrams on the 'strange co-incidence' the poems are retained in his papers; Vockler, Sir Samuel, pp. 39, 43.

Julia was born on 31 Dec. 1847 (according to her tombstone in Toowong Cemetery); little is known of her life before 1869.

His diary records on 23 Oct.: 'Etta Bulgin married' and then adds: '5th rec'd I must depart from thee' from Etta Bulgin wh. she had left for me'.

For Griffith it was a chaotic fortnight, with such unusual outward displays of emotion: on the night of the 14th he records being 'nearly arrested' by a local constable 'coming home at 1 o'clock. Gave him a drink'; appropriately Samuel and Julia watched a 'total eclipse' on the 17th; he left on the 20th.

Mary Griffith to SWG, 3 Jan. 1870, MSS 363/2X, pp. 46–49.

Edward Griffith to SWG, 5 July 1870, MSS 363/2X, p. 61.

Griffith also arranged to take out his M.A. while in the south, which he did in a ceremony at the University of Sydney five days after the wedding; Will. A. Dixon to SWG, 22 May 1870, MSS 363/2X, pp. 54–56.

The piano, symbol of bourgeois affluence, cost £57.15.0, diary, 13 July 1870; Mary Griffith to SWG, 2 July 1870, MSS 363/2X, pp. 57–60.

'Child [girl] born at 3.30 a.m. Lay down at 12 and woke by child's cry, Julia very well all day': after writing letters Samuel went to work, diary, 15 May 1871.

'Boy born at 2.25. Strong and well. Julia had hard time', diary, 6 July 1872.

Palmer formed a ministry on 3 May; Griffith noted details of the crisis and the rumour in his diary.

He was involved in other negotiations; 11 and 13 July in Sydney on his honeymoon he had seen Patrick Healy, and on 15 recorded 'saw Healy. Detq not to stand'; on 25 July he saw 'Low re Western Downs', for Jacob Low see D. Waterson, A Biographical Register of the Queensland Parliament, 1860–1929.

He records nine meetings of this league between Sept. and Nov. 1870; he gave no reason for resigning on 2 Nov.; the league opposed the Palmer ministry.

'Requisition to stand for Brisbane and refused unless Pring withdrawn'; the barrister Ratcliffe Pring had been member for North Brisbane since 17 Aug. 1870; his political allegiance had varied; he had served Herbert, MacKenzie and Lilley as attorney-general, Waterson, Biographical Register.

The Palmer government retained power after the 1871 elections, and parliament met on 7 Nov.; William Hemmant won East Moreton in 1871; Pring retained North Brisbane; F. A. Forbes represented West Moreton; the commission met on 20 Dec., Waterson, Biographical Register.

In the Jan. 1872 elections for the seat of North Brisbane J. K. Handy, a barrister, won; Griffith had attended the nominations, and recorded the result, diary, and Waterson, Biographical Register.

Other signatories included parliamentarians Lilley, Hemmant and G. Edmonstone; with G. R. Fyffe; T. Finney, E. B. Forrest; C. M. Foster; J. D. Heal, J. P. Jost; W. Perry, J. Pratten and C. J. Trundle, MSQ 185, p. 29 ff.

Draft of address to electors of East Moreton, MSQ 185, pp. 41–45; see Graham, Life, pp. 26–29.

Brisbane Courier, Mar. 1872: "The lawyer element already prevails too much in the
House’ even if Griffith was ‘one of the most respectable members of that profession’, *Colonist*, 13 March 1872; Griffith was criticised for his prominence as a ‘‘juvenile Lycurgus’, *Colonist*, 29 June 1872.

Colonist, 13 March 1872; Griffith was criticised for his prominence as a ‘‘juvenile Lycurgus’, *Colonist*, 29 June 1872, 42. Telegraphic Messages Act of 1872, 36 Vic, No, 13 was assented to on 12 Aug,; Equity Procedure Act of 1873, 37 Vic, No, 3 was assented to on 15 July.

QPD, XVI (1874), pp. 82-85; for 1872, see QPD, XIV (1872), p. 510; see Johnston, Queensland Bar, pp. 23–29.

QPD, XXIII (1877), p. 336.

QPD, XXXV (1881), pp. 319 ff.

In re Dalley, QSCR, 11, 162.


Morrison v. Roberts and Hart (property), QSCR 11, 140; Bank of Queensland v. Bourne (contracts), QSCR, 11, 88; Elwood v. Thompson (bankruptcy), QSCR, 11, 191; Shelton v. Raff (probate), QSCR, 11, 164; in re Bank of Queensland, QSCR, 11, 113; Bullen v. Tully (practice), QSCR, 11, 133; Pitt v. Beattie (statutory), QSCR, 11, 173; in re Court (escape), QSCR, 11, 171; Lilley v. Parkinson and others (libel), QSCR, 11, 159; Griffith appeared for Lilley in the libel case, and obtained much satisfaction from the escape case, where he successfully argued that the man had been rearrested after the time of his original sentence had expired.

Unreported cases, from entries in diary.

Details are incomplete; the area is given as over twelve squares; five rooms are shown, with the dining and drawing rooms both being over 15’ x 19’.

SWG to JG, 9 Oct. 1874, MSS 363, 4X.

Ibid, 9 Nov. 1873.

Details deduced from diary entries.

The amounts are given in his diary; “Alice married to Harry Barnes Oxley at Church by father. To wedding with Julia and Eveline”, 5 Mar. 1874.

SWG to JG, 9 Nov. 1873.

Ibid, 6 and 9 Oct. 1874.

From diary and official returns.

For example ex parte Hodgson (property), QSCR, 111, 158; Newton v. Brown (contracts), QSCR, 111, 90; Walsh v. Stephens (company), QSCR, 111, 98; re will of Birckbeck (probate), QSCR, 111, 175; Donkin v. the Telegraph (libel), QSCR, 111, 180; Morrow v. Bellamy (practice), QSCR, 111, 190; Fisher v. Tully (evidence), QSCR, 111, 194; Kelly v. Macarthur (Butchers), QSCR, 111, 69.

Ex parte G, H, Davenport, QSCR, 111, 95, 117, and 121.

Regina v. the Crishna, QSCR, 111, 131.

This argument was used from 1874 particularly by J, M, Macrossan (e.g, QPD XVI, 7 Apr. 1874), p. 128; QPD, XXX (14 May 1879), p. 29); see Harrison Bryan “John Murtagh Macrossan” in Murphy and Joyce, Queensland Portraits, p. 104.

Egan v. Townley, QSCR, 11, 204.

Walsh v. Stephens, QSCR, 111, 98.

Baynes v. Osborne, QSCR, IV, 1.

Noaques v. Hope, QSCR, IV, 57.

Merry v. Australian Mutual Provident Society, case nos. 2, 3, 4, QSCR, 111, 36, 40, 86.


He was ‘just about 6 feet in height’; for description of him in the 1890s, see Graham, Life, pp. 84–85; £1,000 in Mutual Life Association and £700 in Mutual Provident; the examination on 15 May 1870 was by Dr Hobbs, SWG diary, 7, 15, 26, 27 May.

Diary, 26 January 1873.

‘He was very short-sighted, and frequently gave the impression of finding a difficulty in focussing the object of his vision’, Graham, Life, p. 85; he records ‘very tired’ on 18 Oct. 1870; the cricket entry was for Boxing Day 1871; it is speculation how far his illnesses were psychosomatic.

A sequel was Lilley’s ‘violent attack’, so described by Griffith, in parliament on 21 Aug. 1872; Lilley accused Griffith of ‘treatment with members opposite whilst . . . affecting to be following him’; Griffith ‘trusted that he would not lose his temper . . . he believed that if he lived for a hundred years he would never have occasion to regret the part he had taken towards bringing to an end the unfortunate deadlock’; Gibbney attributes the
breaking of the deadlock on 12 June 1872 to Griffith’s efforts; Murphy and Joyce, *Queensland Portraits*, p. 81; *QPD*, XIV, (21 Aug. 1872) pp. 978 ff, (cited pp. 988, 992).

72. Griffith and Lilley had been appointed to a committee to investigate charges against the fellow barrister-politician, J. K. Handy; the committee, which sat in June–July 1873, largely exonerated Handy; for an analysis of the sectarian and inter-Catholic disputes with E. O. MacDevitt, see C. A. Bernays, *Queensland Politics during Sixty Years*, pp. 61–63 and Johnston, *Life*, pp. 107–8.

73. His requisition by 29 electors praised his efforts for the “welfare of the colonists generally and the farmers in particular”, *MSQ* 185, pp. 46–50.

74. The split between Lilley and Griffith followed the parliamentary incidents of 1872 (see note 71 above); the description of him as a “junior” would have hurt his self-esteem; diary, 8 Jan. 1874.

75. Griffith’s excuse could have been MacDevitt’s unsuitability for the job; he may have resented MacDevitt’s attacks on Handy (see note 72 above) but no supporting evidence exists; he had worked with both in legal cases; Griffith was hostile, once saying a bill introduced by MacDevitt could have been improved if only the “honourable member had devoted some attention to it”; Buzacott believed MacDevitt was “chiefly froth and in committee work he was hopeless”, C. H. Buzacott (“Charles Verney”) “Sixty Years of Reminiscences”, *Daily Mail* (Brisbane), 24 Aug. 1907; *QPD*, XVI, 1874 (cited 8 Apr.).

76. *Queenslander*, 13 Aug. 1874.

77. Buzacott also asserts that McLlwraith felt “contempt for the self-seeking of the legal members of the party”; the quarrel with Macalister was over railway policy; Buzacott, *Daily Mail*, 10 Aug. 1907.

78. A deduction from his actions, and speeches on barristers; Buzacott compared Griffith with MacDevitt: “he had the intellectual measure of his preferred rival”, Buzacott, *Daily Mail*, 24 Aug. 1907.


80. Graham changed sides, becoming under-secretary for public instruction from 1876–78 while Griffith was a minister, Graham to SWG, 22, 23 Oct. 1874, *MSQ* 185, pp. 53–63.


82. Cairns’ reports to the Colonial Office give no reason for his opposition to Griffith; he stated that “the Ministry is not a strong one, but it represents the strongest party”; Buzacott alleged that Hemmant was acting unconstitutionally in recommending Griffith — a subordinate minister sent for by the governor having no right to name an alternative; Buzacott also alleged that Cairns later said “I was not going to have Mr Griffith as my Premier”; Griffith’s unconcealed ambition lost him friends even within his own party, Buzacott, *Daily Mail*, 14 Sept. 1907; Cairns to S. of S., 14, 15 June 1876, C.O. 234/36, 10188, 10190.

83. Douglas had served in the two 1866 Macalister ministries and the 1868 Lilley ministry; Hemmant refused office as he was going overseas, Waterson, *Biographical Register*, R. B. *Douglas*. *Australian Dictionary of Biography*, 4, p. 90.

84. He resigned on 20 July 1876; Cairns merely reported that Walsh’s sympathies were with the Opposition, unlike those of his replacement, H. E. King, who had served Macalister as a minister; Cairns to S. of S., 12 Aug. 1876, C.O. 234/36, 12407; 10 Mar. 1877, C.O. 234/37, 6012, and 21 Sept, 1878, 234/38, 14819.

85. Cairns gave no reasons for choosing Douglas; he had anticipated challenges from both Douglas and Griffith: “some pretext will be sought during the recess to get rid of Mr Thorn, or, at least, for reconstituting the Ministry so as to place Mr Douglas or Mr Griffith at its head”, see SWG (attorney-general) to John Douglas, memorandum on need for elections of ministers, 18 Apr. 1877; Cairns to S. of S., 6 Dec. 1876, C.O. 234/36, 1484; 10 Mar. 1877, C.O. 234/37, 5664; GOV A9.

86. Kennedy in private letter to J, Bramston, 22 June 1877, on Kennedy to S. of S., 23 June 1877, C.O. 234/37, 36.

87. Both extracts from the *Queenslander*, 14 July 1877; see also Brisbane *Courier* editorial, 2 Nov. 1877 and Buzacott, *Daily Mail*, 21 Sept. 1907.

88. ‘I had no reason to believe [Griffith] more competent to conduct the government, and who I felt confident could not command a majority of Parliament were [it] now in session’; Governor Kennedy who took office on 10 Apr., presumably relied on the advice given by Cairns before he left Queensland; the two consulted while Kennedy was quarantined (due to a case of smallpox) in Moreton Bay from 26 Mar 1878; Griffith and other politicians visited Kennedy on 2 Apr.; Kennedy to S. of S., 27 Mar. 1877, C.O. 234/37, 6012, and 21 Sept. 1878, 234/38, 14819.
89. His diary shows that he visited Miles from 14 to 16 Sept.: he had not been there before; Griffith records on 15 Sept. being "very tired in afternoon".
93. Ibid., 24 Oct. 1878.
94. Ibid., 16 Nov. 1878.
95. On 13 May 1879, QPD, XXIX [1879], p. 9.
96. Entries in 1879 diary.
97. Griffith records hearing from Cockle on 17 June of his resignation; being offered a judgeship on 25, consulting Lutwyche on 26, refusing on 27 June, SWG, diary, 1879.
99. Griffith records "re-elected Leader of Opposition", on 27 Aug. 1879, diary; an admirer wrote deprecating the "hostile criticism from an obscure section of your party". P. J. McDermott [Drayton] to SWG, 15 Sept. 1879, MSQ 185, pp. 174-75.

Chapter 3. Recognition

1. C. H. Buzacott, Daily Mail, 14 Sept. 1907; see note 55 below.
2. He became a Knight of the Eagle and Pelican, in the Chapter of Edinburgh on 25 Nov. 1878; a member of the Royal Ark Mariners Lodge on 2 Apr. 1879; and a member of its council; he records obtaining degrees on this date: "Kt. of Sun, Kt. of Scotland, Kt. of East and West, Royal Ark Mariner"; he became a Knight of the Sun for the Supreme Council for Scotland of 21 Nov. 1882; diary 1879; certificates in MSS 363/12X.
3. Examples from these categories for the period 3 Aug. 1874 to end of 1878 are given below.
4. In re Normanby Copper Mining Co. Ltd, QSCR, IV, 223; and Normanby . . . v. Corfield and others, QSCR, V, 113.
5. In re Mount Clara Mining Co. Ltd, QSCR, IV, 112.
6. For barristers G. R. Harding, F. A. Cooper, I. J. Blake, H. R. Beor; J. F. Garrick, see R. Johnston Queensland Bar; Fisher v. Tully, QSCR, IV, pp. 176 ff; the Privy Council decision [Mar. 1878] is included at pp. 192 ff; cited at pp. 188, 199.
13. Griffith appeared on 5 Sept. 1876 for a deserted wife trying to protect her property from her ex-husband. In re Kermode, QSCR, IV, 211, he had been overruled on 24 Nov. 1874; in de Libert v. de Libert, QSCR, IV, 98; assent to the amendment was on 27 Nov. 1875, see 1875 Matrimonial Causes Act; 39 Vic. No. 13, section 7.
16. Referring to an unreported case of "Bostock"; SWG to JG, 6 Oct. 1874, MSS 363/4X.
17. His 38 page report on the acts passed in the session to 21 July was completed on 8 Aug.; the governor had also asked MacDevitt on 12 Apr. to report on the effect of repealing certain Imperial statutes, Griffith in replying on 7 Aug. pointedly stressed that he had only received the request on 4 Aug., GOV/A7, despatches 41, 38; QSA.
18. A related act was 43 Vic. No. 1 [24 June 1879] which later extended Queensland’s jurisdiction over Torres Strait islands; the two issues were not contemporaneously linked although the C.O. was considering the acceptance of New Guinea in 1874; see Labilliere to S. of S., 26 Mar., C.O. 234/34, 3382; SWG’s memo of 4 Sept. 1874 enclosed in Cairns to S. of S., 18 Nov. 1874, C.O. 234/34, 1326.
19. Cairns to S. of S., 7 July 1875 and 12080, see later C.O. 234/40, 4522; Solicitor-General

20. See chap. 2 note 97.
21. 38 Vic. No. 4 (1874), An Act to Grant a Civil List so far as respects Ministers of the Crown.
25. SWG to Governor, 9 Sept. 1875, GOV/A8.
26. SWG to Governor, Apr. 1875, JUS/A16.
27. SWG to Governor, 14 Sept. 1875 and 24 Feb. 1876, GOV/A8; and JUS/A17.
29. SWG to Governor, 5 Oct. 1876, enclosed in Cairns to S. of S., 11 Oct. 1876, C.O. 234/36, 14701; copy also in GOV/A9.
30. Ibid. 9 Oct. 1876.
31. Thorn to Governor, 10 Oct. 1876; Colonial Office minutes on 14701; revised bill and SWG to Governor, 14 July 1877, [including Newcastle’s arguments] in Kennedy to S. of S., 14 July 1877, C.O. 234/37, 10919; see also despatches 10221, 10227, 9967, 10771, 10774 and 11331.
32. This comment is from Kennedy’s private letter to J. Bramston, 22 June 1877 in Kennedy to S. of S., 23 June 1877, C.O. 234/37, 9967; his earlier despatch was Kennedy to S. of S., 16 May 1877, C.O. 234/37, 9062.
33. Munro had met Griffith on a ship travelling from Bowen to Maryborough; Munro to SWG, 13 Dec. 1878, MSQ 185, pp. 134-37.
34. Memorandum of Attorney-General, 8 Dec. 1875, GOV/A8 and JUS/A18; see also memoranda, 11 Feb. 1876, 1 Mar. 1876, 8 Aug. 1876 on GOV/A9; Carnarvon’s decision mentioned in memorandum of 8 Aug. 1876.
35. Griffith records his presence at the conference between 25 Jan. and 2 Feb.; Chamber of Commerce to Attorney-General, 14 November 1874, JUS/A15; SWG to Col. Sec, 10 Apr. 1875, JUS/A16; SWG memorandum, n.d., GOV/A9.
37. Attorney-General to Private Secretary, Government House, 31 Oct. 1876, GOV/A9; Cairns to S. of S., 1 Nov. 1876, C.O. 234/36, 348.
40. See chap. 3 note 6; the Queensland Supreme Court decided on 11 Dec. 1874, the Privy Council on 10 Dec. 1877, Griffith analysed the effect of the decision at the request of the Minister for Lands on 6 Apr. 1878, 20 Apr. 1878, JUS/A20.
41. Cairns commented: “Griffith ... a zealous advocate of secular education ... has given a practical turn to the recommendations of the commission”, Charles Lilley opinion, 21 Jan. 1874, EDU/A609; Cairns to S. of S., 19 Apr. 1875, 19 May 1875 [cited], C.O. 234/35, 7308, 8429.
42. The opera season was between 31 Mar. and 22 Apr., his reading appears to have been of light fiction, for instance By and By and Catinam Diaboli; diary entries.
50. SWG to JG, 3 Mar. 1876, MSS 363/4X.
51. Ibid., 4 Feb. 1876.
52. Ibid., 2 Jan. 1875.
53. Ibid., 10 Jan, 1875, and diary, 12 Jan. 1876.
54. "Went to Library in afternoon and saw Marcus Clarke"; no other contact is recorded with Marcus Clarke; later Griffith became friendly with C. J. Brennan and Barbara Baynton; diary, 12 Jan. 1876.
60. SWG to JG, 18 Mar. 1881, MSS 363/4X.
61. This and following quotations from Report of Commission by King and Gibbs to S. of S., C.O. 234/41, 8576.
62. An unusually full diary entry, 20 June 1881.
63. QPD, XXXV, 1881.
64. Miles v. McIlwraith, QLJ, 1, 27.
65. Ibid., p.38.
66. Ibid., pp. 40, 43, 48-49 (allowing appeal to Privy Council).
68. SWG to JG; there are 10 long letters between 9 Feb. and 27 Apr., MSS 363/4X; details supplemented by diary for 1881.
69. Letter SWG, J. R. Dickson, W. Miles and P. McLean to Governor Kennedy, 29 July 1881; Private Secretary to Sir Arthur Kennedy to SWG, 12 and 14 Sept, 1881; Attorney-General's memorandum of 9 Sept.; SWG's memorandum on visit to Kennedy, Sept. 1881, MSQ 185, pp. 326-36.
70. W. Hemmant to SWG, 9 Feb. 1883, MSQ 185, pp. 349-52; Bernays, Queensland Politics, pp. 90-91.
72. F. Fiddes, 30 May 1881, on Kennedy to S. of S., 4 Apr. 1881, C.O. 234/41, 9065.
74. Allegations were made by Griffith in the Legislative Assembly, and his 1883 campaign speech; see Kennedy to S. of S., 16 and 19 Apr. 1883, C.O. 234/43, 6333 and 9282.
75. See chap. 2, note 97; in 1874 the bench had been expanded by the appointments of Sir Charles Lilley on 4 July and E. Sheppard on 17 July when it had been argued that Griffith was far more worthy of selection, especially over Sheppard; when Cockle went overseas in 1878 suggestions were made that Griffith should become acting chief justice.
76. G. R. Harding was appointed 14 July 1879; R. Pring became an acting judge on 13 July and was appointed on 11 Nov. 1879; "Mr Justice Pring sworn in after objection Mr Justice Sheppard's claim disallowed", SWG diary, 13 July 1880.
77. Examples are MacDonald v. Tully (property), QSCR, V, 36 and QLJ, supplement, 21 and V, 192; Buckland v. Crombie [contract], QLJ, 1, 149; Rose v. Gillespie and Rose [probate], QLJ, 1, 94; and Brisbane Municipal Council v. Watson, QLJ, 1, 127.
78. Examples are Normanby Copper Mining Co. v. Corfield [company], QLJ, 1, suppr., 3; in re W. T. Perkins [insolvency], QLJ, 1, 90; in re Drysdale, articled clerk [admission], QLJ, 1, 83; Hancock v. Berry [practice], QLJ, 1, 55; R v. Highfield [criminal], QSCR, V, 186; O'Kane v. Sellheim [libel], QLJ, 1, 85; Mills v. Day Dawn Mining Co. [Gold Fields Act], QLJ, 1, 98; ex parte Grants [Towns Police Act], QLJ, 1, 81; application by Bulcock against Ward [Electoral Rolls Act], QLJ, 1, 103; Schaffenberg v. Unmack [Insurance], QSCR, V, 179; re publisher "Northern Argus" [contempt of court], QSCR, V, 37; Cunningham v. McFarlane [cattle stealing], QLJ, 1, 49; and Vickers v. Sellheim [frauds], QLJ, 1, 131.
79. In re the Real Property Act, 1861, and the application of the Right Reverend Dr James Quinn, QSCR, V, 7.
80. Roxburgh v. Tully, QLJ, 1, 144.
82. Annear v. Commissioner for Railways, QLJ, 1, 162.
83. Mackie v. Wienholt, QSCR, V, 211.
84. In re Christopher Wilson, insolvent, QLJ, 1, 45.
86. R. v. Gomez, QSCR, V, 189; for Griffith’s dispute with the Colonial Office over boundaries, see note 18 above.
87. Dowling v. Fritz and others, QLJ, 1, 82.
88. Perkins v. The Evangelical Standard, QLJ, 1, 43.
89. Attorney-General v. Shire Council of Toowong, QLJ, 1, 170.
90. Application by Bulcock against Ward, QLJ, 1, 103; see Bernays, Queensland Politics, p. 101.
91. F. ff. Swanwick was member for Bulimba from 29 Nov. 1878 to 4 July 1882; “Verdict for pl. in Brookes v Swanwick. Defts brother committed for contempt — being armed with loaded revolver and bowie knife behind me and threatening me”, SWG, diary, 19 May 1880; Sidney Swanwick to SWG, 20 May and 7 June 1880; MSQ 185, pp. 91-93, 203, 204.
93. Memorandum of Conveyance 34993, registered 8 Sept. 1874 (the land was originally granted to John McConnell in Jan. 1845); and 62393, registered 16 Dec. 1879; Queensland Certificates of Title 33698, Register Book vol. 229, folio 200; and 54164, vol. 365, folio 154.
96. SWG to JG, 22 Feb. 1881, MSS 363/4X.
98. H. Kimber (solicitor for Major-General Q. Feilding, chairman of the English company) to SWG, 2 June 1881, MSQ 185, pp. 310-12.
99. Feilding came to Queensland in 1882; SWG, diary, 1882.
100. Search of 1883 electoral rolls, Series ELE, QSA.
101. A. Meston to McLlwraith, 31 Dec. 1881, Palmer-Mcllwraith Papers, Oxley Memorial Library, there is no reference in Griffith’s papers to this issue, which is probably related to the insolvency proceedings; F. H. Stubley was gaolled on bankruptcy charges in Mar. 1884; for details of politicians mentioned see Waterson, Biographical Register.
102. Analyses of parliamentary division lists show that Griffith achieved more cohesion from his followers than did McLlwraith; the overall average is 78.2% to 73.5%, (1879 sessions: 79.9% to 77.6%; 1880: 75.3% to 64%; 1881: 71.5% to 74.8%; 1882 to 83: 86.1% to 77.5%); these figures are remarkably high for a period before the emergence of modern political parties; see R. B. Joyce, “Queensland”, and discussion of figures in The Emergence of the Australian Party System, ed. P. Loveday, A. W. Martin, R. S. Parker pp. 33-40, 117-26, 488-97.
104. Details from newspapers and SWG diary.

Chapter 4. Style as Premier

1. Alexander Pope, An Essay on Man, Ep. 111, 1. 304; Griffith derived satisfaction from his meticulous administration; for discussion of “administrative” types see H. D. Lasswell, Psychopathology and Politics, p. 151 and A. F Davies, Skills, pp. 15-16; see note 13 below.
2. See Waterson, Biographical Register, pp. 203-4.
3. QPD, XLI, 8 Nov. 1883, p. 19.
4. In the 1883 session the Liberals showed 92.6 per cent cohesion in divisions; this was to
drop to 61.7 per cent, but the overall average for 1883 to 88 remained high at 72.1 per cent; see chap. 3 note 102 above.
5. QPD, XLI, 6 Nov. 1883, p. 6.
6. These personal characteristics have appeared above; A. Deakin, The Federal Story, p. 12.
8. SWG to A. Archer, 4 July 1883, letter 704, COL/1, 644/740, QSA.
10. SWG to T. McIlwraith, 1 Oct. 1883; J. Service to T. McIlwraith, 7 Oct. 1883, letter 727 COL/1, 644/740, QSA.
11. See Serle, in Martin, Australian Federation, p. 6; R. C. Thompson, Australian Imperialism in the Pacific, pp. 84-87.
13. An Archives assistant pessimistically believed the volume was "so immense that no one person could possibly go through it all"; J. M. Carroll, 7 Nov. 1969; with the aid of research workers I believe I have covered his significant contributions, though much has been omitted in reduction of my manuscript.
15. Francis Adams alleged that Griffith was "pure to the pitch of pedantry in his use of political patronage [still a very distinct form of public bribery, especially in Queensland]", "Some Australian Men of Mark", Fortnightly Review 57 (1892): 200; Report of Royal Commission on Civil Service, pp. 2-3.
23. 49 Vic. No. 7 and 50 Vic. No. 33.
24. J. Laverty, "The Queensland Economy 1860-1915", in Murphy, Joyce and Hughes, Prelude to Power, pp. 29-30.
25. 50 Vic. Nos. 15 and 32, and 50 Vic. No. 20.
26. Osborne and others v. Morgan and two others; Osborne v. Morgan; Martin and others v. Morgan and others, QLJ, 11, 113.
29. Secretary, Herbert River Farmers; Association to SWG, 25 Sept. and 9 Oct. 1886, 85/7375, COL/A439, 85/7750, COL/A441.
30. James W. Phillips to SWG, 2 Dec. 1885, 85/9233, COL/A446.
31. J. E. M. Vincent to Acting Col. Sec., 5 Apr. 1886 and 8 June 1887, 87/4698, COL/A503.
32. T. Tomlinson to Chief Sec., 27 Feb. 1888, 88/1862, COL/A537.
33. SWG draft reply, n.d., file contains McIlwraith's draft Regulations and earlier correspondence, 83/5867, COL/A373.
34. See correspondence on files 83/5849, COL/A373 and 83/6158, COL/A374.

35. The act, 47 Vic., No. 12 was assented to on 10 Mar. 1884; see minutes on 83/6399, COL/A375.

36. Memorandum, 28 Jan. 1884 on 84/1148, COL/A381 and correspondence with other colonies on 84/1755, COL/A383.

37. Minute 3 Apr. 1884 on 84/2440, in 83/5957, COL/A373 and 83/6032, COL/A374; Musgrave to S. of S., 10 Apr. 1884, 8754, C.O. 234/44.

38. Minute SWG “I will see him”, 23 Oct. 1884, on 84/7410, COL/A404; see also Rev. J. Chalmers to Col. Sec., 28 Apr. 1884, 84/3692, COL/A390; Griffith was prepared to criticise what he regarded as unfounded attacks on Queensland’s recruiting: for instance the 1882 Melbourne Argus correspondent, W. E. Morrison on the Lavinia, was dismissed by Griffith as “a very young man who does not bear a high reputation, and whose narratives need to be received with much caution”, 10 Jan. 1884, Musgrave to S. of S., 15 Jan. 1884, 3742, C.O. 234/44.

39. SWG, 6 Feb. 1884, on Musgrave to S. of S., 18 Feb. 1884, 5767, C.O. 234/44.

40. See Musgrave to S. of S., 12 Mar. 1884, 6955, C.O. 234/44; SWG: “All Govt. Agents to be instructed not to allow any labourers to be recruited at New Britain or New Ireland until further order”, 21 Feb. 1884, on Horrocks to Under Col Sec., 11 Feb. 1884, 84/1073, COL/A381.

41. Memorandum of 18 Mar. 1884 on 84/5191, COL/A395.

42. SWG, 14 Jan. 1884 on R. Kingsford, to Under Col. Sec., 14 Jan. 1884, 84/254, COL/A378.


44. Minute, 18 Feb. 1884, on Mulgrave . . . Association to Col. Sec. 10 Feb. 1884, 84/1236, COL/A381; minute, 18 June 1884, on Horrocks to Under Col. Sec., 3 June 1884, 84/3966, COL/A391.


46. J. Thurston, Acting High Commissioner for the Western Pacific, to Fielding Clarke, Acting Chief Judicial Commissioner for the Western Pacific, 18 Aug. 1884, cited Fowler, “McMurdo”, Queensland Heritage, 1, 9, p. 22; after this case Griffith, admitting “the laxity of supervision which too long prevailed”, removed C. C. Horrocks from his position in charge of the Immigration Department, and admonished Ralph Gore (he was dismissed in July 1886); SWG to Governor, 1 Oct. 1884 and 6 Mar. 1885, in Musgrave to S. of S., 23 Oct. 1884 and 9 Mar. 1885, 20878, C.O. 234/45 and 7581, C.O. 234/46.

47. See note 38 above.


50. Griffith refused on 12 May 1885 to re-license Wawn on Wawn to Col. Sec, 4 May 1885; Griffith ruled on 6 Mar. 1885 that Thomson was “eligible for re-employment” after reading his explanation, 28 Feb. 1885 (85/1524); Thomson was removed in May 1885 after the 1884 Royal Commission [note 53 below]; these and minutes of enquiry [Dec. 1884] on 85/3236, COL/A422.


53. The commissioners, appointed in Dec. 1884, were J. F. Buckland, W. K. Rose and H. Milman; SWG to Governor, 27 Mar. 1885; SWG minute, 30 May 1885, on justice of peace, Townsville to Immigration Agent, 28 May 1885 (85/3802); all correspondence and report on 85/9702, COL/A449.

54. See correspondence on 85/5429, COL/A431.

55. SWG to Governor, 13 July 1885, on Musgrave to S. of S., 14 July 1885, 15515, C.O. 234/46; see also Col. Off. correspondence with Foreign Office, Sept.-Oct. 1885, 17246, 18002, 18538, C.O. 234/46.


57. The Yatala justice, J. A. Gibson, alleged that a baby had been eaten by a dog; see Gibson to Col. Sec., 25 Nov. and 4 Dec. 1884, and minutes of enquiry ordered by Griffith (“body to be exhumed”) on 84/9000; COL/A410; SWG, 21 Mar. 1885, on minutes after Anonymous to Col. Sec., 20 Dec. 1884, 85/0057 on 85/1847, COL/A417.
58. Carl Lang to Under Col. Sec., 17 June 1885, on 85/4744, COL/A429; SWG, 13 July 1885, on Johnston to Under Col. Sec., 3 July 1885, on 85/7547, COL/A440.
59. SWG, 1 Dec. 1885, on memorandum A. R. MacDonald to Immigration Agent, 26 Nov. 1885, 85/9527, COL/A448.
60. 4 Vic. No. 17, assented to on 10 Nov. 1885.
61. After Griffith became Chief [not Colonial] Sec, on 1 Apr. 1886, he left some of the detailed decisions on the Kanakas to B. B. Moreton, SWG minute, 2 Aug. 1886, on W. Adams to Chief Sec., 26 July 1886, 86/5782, COL/A475.
62. SWG minute, 16 Apr. 1888, on interoffice memoranda, 88/3081, COL/A541.
63. SWG minute, 27 Mar. 1888, on interoffice memoranda, 88/3251, COL/A541.
64. See note 33 above; the employer was Drysdale brothers, the agent Mr Beardmore; SWG minute, 23 Nov. 1883, on J. Hughes, Acting Police Magistrate, Townsville, telegrams to Col. Sec., 20–24 Nov. 1883, 83/6194, COL/A374; SWG minute, 12 May 1884, on Wood Bros and Boyd to Col. Sec., 9 May 1884, 84/3483, COL/A389; some immigration from Singapore continued, see SWG minute, 26 Oct. 1886, on W. O. Hodgkinson, P. M. Cooktown to Under Col. Sec., 20 Sept. 1886, 86/7577, COL/A483.
65. SWG minute, 23 Nov. 1883, on Col. Sec. Hong Kong to Col. Sec. Queensland, 26 Oct. 1883; Harbour master Hong Kong to Hon. Col. Sec. 25 Oct. 1883; both filed with Immigration Agent, Mackay to Immigration Agent, 12 Dec. 1883, 83/6418, COL/A376.
66. SWG minute, 26 Nov. 1884, on S. Hoffnung to SWG, 21 Nov. 1884, 84/8289, COL/A408; SWG minute, 28 Sept. 1885, on Messrs Bunton and Little [acting for Swallow and Derham] to Col. Sec., 15 Sept. 1885, on 85/7486, COL/A439; on Singalese, see SWG minute, 16 June 1886, on Secretary Mackay Hospital Committee to Col. Sec., 15 May 1886, 86/3937, COL/A466.
67. SWG minute, 9 May 1888, on P. Wolff to Col. Sec., 16 Apr. 1888, 88/4243, COL/A545.
68. 46 Vic. No. 7.
69. His minute continued: "The prosecution not to be proceeded with and none to be instituted in future without instructions from the Col. Sec."
70. The comment was by I. I. Imrie, Immigration Officer to R. Gore, 27 Nov. 1883; SWG minute, 11 Dec. 1883, on Gore to Under Col. Sec, 27 Nov. 1883, 83/6210, COL/A375.
71. SWG only acknowledged the letter, L. Wittenberg to Col. Sec, 3 July 1884, 84/4679, COL/A394.
72. Eventually Griffith regretted being unable to proceed further due to Fortini’s intended departure, SWG minute, 29 Apr. 1884, on Fortini to Under Col Sec., 25 Apr. 1884, file includes earlier correspondence, 84/3052, COL/A388.
73. SWG minute, 2 Oct. 1884, on Mulgrave ... Society to Col. Sec., 27 Sept. 1884, 84/6825, COL/A402; see subsequent correspondence on 85/2167, COL/A418.
74. See minutes 18 Jan. 1884; 11 Dec. 1883 and 22 July 1884; on 84/382, COL/A378; 83/6210, COL/A375; 84/5427, COL/A396.
75. SWG minute, 25 Jan. 1884 on Gore to Col. Sec., 24 Jan. 1884, 84/637, filed with 84/1529, COL/A383; for complaints about Rockhampton depot see 84/8678, COL/A409.
76. For some of Randall’s activities see 85/33, COL/A411; for Pietzcker, see 85/1419, COL/A416.
77. Griffith objected to immigrants being put on “forced labour on sugar plantations” see minute, 13 July 1885, on Gore to Under Col. Sec., 8 July 1885, 85/4871, COL/A429; for earlier demands for labour from Mackay Planters’ and Farmers’ Association see 85/3013, COL/A422.
78. Statistics collated by Immigration Agent, Aug. 1885, see 85/6061, COL/A434.
79. SWG minutes, 20 Mar. 1886, 13 Sept. 1886, and 14 Jan. 1887 on 86/2363, COL/A459; 86/7037, COL/A480; 87/328, COL/A486.
80. R. G. W. Herbert minute, 18 Jan. 1885, on J. E. Davidson and J. B. Lawes to S. of S., Jan. 1885; SWG to Governor, 1 Apr. 1885, both filed with Musgrave to S. of S., 13 Apr. 1885 and 19 May 1885, C.O. 234/46, 9162 and 11782; Law Officers to S. of S., 29 July 1885, C.O. 234/46, 13436 and 26 June 1886, C.O. 234/17, 11400.
83. Petition in Palmer to S. of S., 13 July 1886, C.O. 234/47, 17394; for careful analysis of these petitions, and full analysis of the northern separation movement see C. R. Doran, "North Queensland Separation in the Nineteenth Century".

84. "Your trip north I am glad has done good the separationists here are always active ... but I watch them diligently", Garrick to SWG, 17 Sept. 1886, MSQ 186, pp. 541–58; Northern Queensland Separation Council to S. of S., 15 Sept. 1886, C.O. 234/47, 16657.


86. See SWG to JG, nine letters between 30 Jan. 1882 and 11 July 1888, MSS 363/4X, details from diaries 1880s.

87. On 21 Nov. 1882 he became "a Knight of the Sun, Philosophical Mason, Knight K.I." in the Scottish order; on 4 July 1883 he became "Grand inspector, inquisitor, commander 31st degree", "prince of the Royal Secret, 32nd degree", and "Grand Inspector General 33rd Degree"; his rise through the 33 Masonic degrees between 1869 and 1883 had been rapid, typical of his conscientious, thorough approach; his premiership gave him less time for masonic activities, to his regret, as he claimed in 1893: "for some time after that [becoming a Master Mason] he devoted all the time at his disposal to instructing himself in the lore of the craft, and endeavoured as far as in him lay to assist in the administration of its affairs and such other matters as he could. For some years past ... his other vocations of a public nature were so numerous and arduous that he had been practically compelled to leave Masonic business in the hands of other brethren", SWG address 26 Oct. 1893, The Keystone, 2, 8, Nov., 1893, copy in SWG papers, MSQ 188, pp. 747–55.

88. See chap. 8 note 27 below; a Brisbane distiller after a party on the Lucinda referred to her "galley and the orgies she's witnessed — also cabinet meetings", J. M. Joshua to A. Deakin, n.d. [c. Feb. 1909], Deakin papers 1540/3301–2.

Chapter 5. The Liberal Ethos

1. See note 45 below.
4. SWG minute, 17 Sept. 1884, on C. Woods to SWG, 11 Sept. 1884, and minute, 10 Aug. 1885, on S. G. Ginner to Governor, 4 June 1885, 84/6496; COL/A400 and 85/5711, COL/A432.
13. See chap. 4, note 65 above; amending act 47 Vic. No. 13, for instance on 28 September 1885 Griffith suggested to the Victorian Chief Secretary that the Federal Council should decide whether colonies should recognise each other’s certificates of naturalization, 85/7128, COL/A440.
14. SWG minute, 12 Jan. 1887, on Police Officer, Georgetown to Col. Sec., 11 Dec. 1886, 87/204, COL/A486; for Bundaberg incident, see SWG minute “satisfactory”, 18 Sept. 1884, on Police Officer, Bundaberg to Col. Sec., 10 Sept. 1884, 84/6474, COL/A400.
17. 48 Vic. No. 20 [1881 act, 45 Vic. No. 2].
18. SWG minute, 3 Nov. 1885, on Douglas to Chief Sec., 22 Oct. 1885, 85/8224, COL/A443.
19. SWG minute, n.d., on B. Hely, Private Secretary to Special Commissioner to R. Gray, 7 Oct. 1887, 87/7838, COL/A519.
20. SWG minute, 17 Dec. 1884, on H. E. Aldridge to Col. Sec., 6 Dec. 1884, 84/8752, COL/A409.
21. SWG minute, 21 July 1884, on Dr H. Finlay to Col. Sec., 8 July 1884, 84/5034, COL/A395.
22. SWG minute, 30 June 1885, on Secretary, Burke District Hospital, Normanton, to Col. Sec., 2 June 1885, 85/4247 on 85/6203, COL/A434.
23. The majority of the committee opposed admitting Aboriginal women suffering from “syphilitic diseases... the stench from whom was absolutely unbearable”. B. Moreton minute, 27 June 1887, on Secretary Mackay District Hospital to Col. Sec., 18 June 1887, 87/4928, COL/A504.
25. SWG minute “no action”, 20 June 1884, on James Savage to Col. Sec., n.d., 84/4025, COL/A392.
26. SWG minutes both 20 Feb. 1885, on Inspector Isley, Port Douglas, to Commissioner of Police, 31 Jan. 1885 and 3 Feb. 1885 on 85/989, COL/A414; SWG minuted “for gross neglect of duty which resulted in the murder of several inoffensive blacks” when Constable Nichols appealed against his dismissal, 9 Apr. 1885, on 85/2331, COL/A419.
27. See files 85/4024 [Geraldton], COL/A392; 85/4521 [Cooktown], COL/A428; 85/4603 [Lalla Rookh], COL/A429; 85/5749 [Cooktown Independent], COL/A433; 85/6952 [Tully River], COL/A439; 85/7803 [Pyramid Sugar Company], COL/A441.
28. SWG minute 20 May on D. T. Seymour to Col. Sec., 19 May, see later 24 June 1885, on 85/4592, COL/A428.
29. Correspondent “Civis” to Cooktown Independent, 85/1336 on 85/3053, COL/A422.
30. See 85/3928 [Hagenauer], COL/A425; 86/8580 on 87/700 [Bloomfield River], COL/A487; the government had found a boat but Moreton refused on 23 Mar. 1887 to replace it (Cape Bedford) 87/2134, COL/A493; SWG 3 Mar. 1888 on 88/1913 [Russell River], COL/A537.
32. Eligible for admission were “those who, owing to age or infirmity, are unable to maintain themselves, and have no friends or relatives who were willing or can be compelled to support them”, Regulation 1, of 1885, Queensland Government Gazette, 9 May 1885, copy in 85/3749, COL/A425.
33. SWG, 7 Oct. 1884, on Secretary Industrial Home, Merrivale Street to Col. Sec., 3 Oct. 1884, 84/6926, COL/A402.
34. SWG, “I am not prepared to recommend any action at present”, 24 Oct. 1884, on J. H. Norris to Col. Sec., 23 Sept. 1884, 84/6800 on 84/7483, COL/A404.
35. SWG, 1 July 1885, on Visiting Justice Dunwich to Under Col. Sec., 1 July 1885, 85/4672, COL/A428; Charitable Institutions Management Act. 1885, 49 Vic. No. 8, assented to on 22 Sept. 1885; after this act Griffith replaced from 1 Jan. 1886 the previous superintendent of Dunwich I. A. Hamilton, and his wife [the matron], with Dr Smith; SWG, 13 Nov. 1885, on Mrs Hamilton to Col. Sec., 12 Nov. 1885, 85/8488, COL/A443.
37. SWG, 18 Feb. 1885, on W. O. Hodgkinson, Clermont magistrate, to Under Col. Sec., 16 Feb. 1885, filed on 85/2419, COL/A419.
38. SWG 21 Apr. 1885, on Secretary Ipswich Ladies' Christian Association to Col. Sec., 8 Apr. 1885, on 85/2939, COL/A421.
39. SWG, 20 Mar. 1885, on Secretary Aramac Hospital to Under Col. Sec., 13 Mar. 1885, 85/1372, COL/A417.
40. See file 86/2375 [Brisbane Relief Board] COL/A459; SWG, 7 July 1886, [he was asked
these questions during his northern tour between 3 May and 6 June on E. Y. Lowry, Secretary Labourers' and Lumpers' Union, Ross Island, Townsville, to SWG, 30 June 1886, 86/5096 filed on 86/7398, COL/A482.

41. SWG, 2 Aug. 1886, on Mayor of Townsville to Chief Sec., 24 July 1886, 86/5818; see file 86/7398, COL/A482; see for Oct. 86/7911, COL/A483.

42. For request in Oct. for a deputation, and various reports (a police estimate was 600–700 in Brisbane who "would work if they could obtain employment") see file 86/7722, COL/A483.

43. Dr Smith, Medical Superintendent to Chief Secretary, 21 Sept., 87/7484, COL/A517,

44. 48 Vic, No. 17.

45. SWG, Nov. 1884, QPD, 44, p. 1531, the issue was raised again in 1886 when Griffith saw a deputation from the Social Purity Society on 17 Sept.; Griffith introduced the Criminal Law Amendment Bill raising the age of consent for females, but this did not pass in 1887; E. Barclay, "Queensland Contagious Diseases Act 1868..." Pts 1, 11, Queensland Heritage, 2.

46. SWG, Nov. 1884, QPD, 44, p. 1531, the issue was raised again in 1886 when Griffith saw a deputation from the Social Purity Society on 17 Sept.; Griffith introduced the Criminal Law Amendment Bill raising the age of consent for females, but this did not pass in 1887; E. Barclay, "Queensland Contagious Diseases Act 1868..." Pts 1, 11, Queensland Heritage, 2.

47. SWG, 29 Oct. 1885 (Gympie), 85/8247, COL/A443; SWG, 1 Oct. 1885 (Toowoomba), 85/7227, COL/A439; SWG, 21 Dec. 1885 (Charleville), 85/9608, COL/A448.

48. SWG, 29 Oct. 1885, on visitors to Reception House to Col. Sec., 11 Nov. 1885, 85/8927 filed with 85/9117, COL/A447.

49. SWG, 13 Mar. 1885, on Visitors to Reception House to Col. Sec., 11 Mar. 1885, 85/1655, COL/A447.

50. SWG, 24 Nov. 1885, on Visitors to Reception House to Col. Sec., 11 Nov. 1885, 85/8828 filed with 85/9117, COL/A446.

51. SWG 16 and 19 Nov. 1883, on telegrams Cloncurry residents to Col. Sec., 1 and 19 Nov. 1883, 83/5980, COL/A373.

52. See Howard Vincent to SWG, 11 Dec. 1884, MSQ 186, pp. 42–45; the act was assented to on 6 Oct. 1886, 50 Vic. No. 14; for Seymour's complaints see his memo to Col. Sec., 25 Oct. 1887, 87/8571, COL/A523; see S. White, "Howard Vincent and the development of probation", Historical Studies, 18, 73.

53. For examples see nn. 54–61 below, which cover property, contract, practice, legal profession, local government authority, vice-admiralty and probate, see Grau v. Colonial Insurance Company New Zealand, QLJ, 11, 53 (insurance); In re J. A. Marshall and Co., QLJ, 11, 67, (insolvency); and A. M. King v. Chester and others QLJ, 11, 186 (legality of the game of Yankee grab).


56. New Zealand Loan and Mercantile Agency Co. v. H. and J. Howes, QLJ, IV, 73.


58. In re the settled estate of James Toohey, deceased, QLJ, 11, 39.

59. Murphy v. Chandler and others, QLJ, 11, 64.

60. In re John Morrice, QJL, 11, 69; Lilley cited at p. 70; Mein disagreed with Lilley and Harding.

61. In re Graham, a Scottish law agent, QJL, 11, 81, cited pp. 82–3.

62. SWG, 10 Apr. 1884, on Sec. Queensland United Victuallers Association to SWG, 7 Apr. 1884, 84/2592, COL/A386; see also Seymour, 7 May 1884.

63. Temperance Council to Col. Sec., 12 June 1884, 84/4172, COL/A392; Mayor of Brisbane (J. McMaster) resolutions of public meetings on 84/7731, COL/A406; Licensing Act of 1885, 49 Vic. No. 18, section 75, assented to on 10 Nov. 1885 [in effect from 1886].

64. 29 Vic. No. 11; SWG initials on Govt. Medical Officer to Col. Sec., 17 Sept. 1885, 85/6875, COL/A437.

65. SWG (dispensed) 5 Aug. 1885; [no action] 24 Sept. 1885, see file 85/7117, COL/A438; appointment Capt. J. R. Jekyll, see 85/7401, COL/A439.

66. SWG, 18 Feb. 1885, on W. M. Galloway to Premier, 11 Feb. 1885, 85/1018, COL/A415.

67. On 27 May 1885, see file 85/4052, COL/A426; SWG "deputation received", 6 Aug. 1886, see file 86/6050, COL/A476.

68. A. Walker, Secretary Queensland TLC to Chief Sec., 5 July and 14 Sept. 1886; Griffith
saw a deputation on 9 July 1886; 86/5117, COL/A471 and 86/7120, COL/A480; Trade Unions Act 50 Vic. No. 29.

69. Employers Liability Act, 50 Vic. No. 24 assented to on 10 Nov. 1886; see file 87/5585, COL/A508.

70. Secretary T.L.C. to Chief Sec. 18 July 1887, 87/5584 on 87/5585, COL/A508.

71. Queensland Federal Council (Adopting) Act, 49 Vic. No. 16, assented to on 5 Nov. 1885.


75. Derby’s offer was on 9 May 1884; for telegrams and letters, especially between Griffith and Service, see Queensland correspondence on New Guinea, COL/2, 1884; see also R. B. Joyce, Sir William MacGregor, pp. 95–108; R. Thompson, Australian Imperialism in the Pacific, pp. 87–93.

76. Telegrams to Service, 8 and 30 July 1884, COL/2; New Guinea and Pacific Jurisdiction Contribution Act of 1884, 48 Vic. No. 7, was assented to in Aug.

77. The British cabinet had decided on 6 Aug. to declare a Protectorate over the whole of eastern New Guinea; after hearing of German claims the Foreign Office on 9 Aug. agreed to limit the area to the south coast; these overseas negotiations were not passed on to Australia until 9 Oct.; Thompson, Australian Imperialism, pp. 89–91; Griffith’s refusal was on 25 Sept. after a spate of telegrams from 17 Sept.; see Queensland correspondence on New Guinea, COL/2.

78. SWG to J. Service, draft telegram 10 Oct. 1884, COL/2; the Protectorate was proclaimed in New Guinea on 23 Oct. [mistakenly] and 6 Nov. [officially]; Bede Dalley, Col. Sec. of NSW, told Griffith that Service was “unquestionably mad”, 16 Oct. 1884, MSQ 186, pp. 34–36.

79. R. G. W. Herbert to General Scratchley, 17 Nov. 1884; SWG minute, n.d., on copy of above, COL/2; SWG to Governor, 18 Feb. 1885, in Musgrave to S. of S., 19 Feb. 1885, C.O. 234/46, 6079.

80. The news of Germany’s action was first reported on 19 Dec. [by the Sydney Daily Telegraph]; the journalist [Sydney Morning Herald, 5 Jan. 1885] who reported that “there is no angrier man in Queensland than Mr Griffith” gave a wrong impression, Thompson, Australian Imperialism, p. 92; Musgrave was sceptical about Germany’s plans, see Musgrave to S. of S., 5 Jan. 1885, C.O. 234/46, 173.


82. SWG to Musgrave, 18 May 1885; Griffith’s original calculations in minute, 20 Mar. 1885, on Premier Victoria to Premier Queensland, 9 Mar. 1885, then included in letter to Service, COL/3.

83. Correspondence in COL/3; Scratchley to Musgrave, 18 Sept. 1885, 85/7594, COL/A440; see also private letters Scratchley to SWG e.g., 17 Sept. 1885, MSQ 186, pp. 197–204.

84. See minute by J. Bramston on Kennedy to S. of S., 2 Apr. 1879, C.O. 234/39, 9134; Griffith was aware of this reluctance: “for private reasons . . . the Imperial Government would not permanently appoint Douglas”, Garrick to SWG, 1 Jan. 1886, MSQ 186, pp. 264–68; Griffith had written a reference for Douglas on 26 Feb. 1884, on Douglas to S. of S., 30 Apr. 1884, C.O. 234/45, 7293.


86. SWG to Governor, 30 Mar. 1886, COL/4.


88. Douglas to SWG, 26 May, 5 June 1886; Gillies to SWG, 8 June 1886; COL/4.

89. See minutes on Palmer to S. of S., 27 Nov., C.O. 234/47, 21463; SWG’s draft telegrams to Jennings and Gillies, Dec. 1886 in Queensland, COL/4.

90. The treaty was dated 14 Aug. 1876; Queensland drafted a bill in 1881 but this was not passed after an Imperial Fugitive Offenders Act was passed in 1881; for attacks on the 1883 French Recidivistes Bill, proposing to send 60,000 convicts to the Pacific, see Thompson, Australian Imperialism, pp. 73–75; see also Foreign Office to Col. Off., 27 Aug. and 24 Sept. 1883, C.O. 234/43, 14877 and 16331; SWG was involved as premier.
in Jan. 1884 in returning two escapees, memorandum 30 Jan. 1884, on Vice-Consul for France to Col. Sec., 28 Jan. 1884, 823/COL/A380; SWG drafted a bill in 1884, see collected correspondence [1881-84] on file 84/6611, COL/A401 and [1883-88] on 88/4737, COL/A547.

91. SWG minute, 4 Aug. 1884, on H. Fitzgerald (Cooktown) to Commissioner of Police, 4 Aug. 1884, 84/5475 on 84/8118, COL/A407.

92. SWG, after receiving comments from other colonies on his draft bill, decided in June 1885 that it was "better to await the further development of the policy of the French Government before taking legislative action"; SWG to Premier of Victoria, 26 June 1885, printed further correspondence, 1884-85, Queensland Government; the French Recidivistes Act was passed on 25 May 1885 with a subsequent enactment of 26 Nov. 1885 naming New Caledonia, Queensland Govt. Office, London, to Under Col. Sec., 5 Feb. 1886, 86/2018; copies of both in collected correspondence 1883-88, 88/4737, COL/A547.

94. SWG to Premier Victoria, 3 Mar. 1886, on Musgrave to S. of S., 10 Mar. 1886, C.O. 234/47, 7106; Musgrave in private letters to SWG doubted whether France would ever be driven out of the Pacific altogether, and queried whether the Federal Council should protest on SWG's terms as it could be taken as evidence that the fears of being swamped by escapees were "discreditable bunkum" if the colonies always had the powers to exclude, Musgrave to SWG, 3 and 9 Mar. 1886, MSQ 186, pp. 304–9, 314–17.

95. W. H. Mercer, 16 Aug. 1886, on Palmer to S. of S., 15 June 1886, C.O. 234/17, 14224; see also Mercer's reference to SWG: "the aggressive self-importance of politicians who have their local reputation to consider and are little embarrassed by the difficulties felt by the Home Govt. in conciliating foreign powers", 27 June 1886, on Musgrave to S. of S., 10 Mar. 1886, C.O. 234/47, 7106.


98. See SWG diary, 11 Oct. 1886; meetings reported on Palmer to S. of S., 2–8 Nov. 1886, C.O. 234/47, 22949–50, 23215–7; the Col. Off. was well aware of the Presbyterian Missions' views: the personal views of Griffith are, as ever, difficult to determine from his legalistic approach; the Col. Off. saw contradictions in his views; in letters to Garrick, Griffith argued that "grounds of humanity" were sufficient to oppose French annexation, and that Australia's loyalty to Britain would be adversely affected if Britain accepted France's 1886 compromise; ironically considering Col. Off. criticism, Garrick's replies included gossip about the progress of Griffith's knighthood, Garrick to SWG, 9 July and 17 Sept. 1886, MSQ 186, pp. 442–44, 541–58.


100. Johnson, Volunteers, p. 73.

101. 49 Vic. No. 27; the War Office sanctioned it without question, War Office to Colonial Office, 18 Apr. 1885, C.O. 234/46, 6949.


103. J. Bramston minute: "Garrick no doubt wants ... his ship flying a pennant ... the symbol of a ship of war — a status they do not yet possess", 25 Nov. 1884, on Admiralty to Col. Off., 15 Nov. 1884, C.O. 234/45, 19909.


105. He called Queensland's two gunboats "the nucleus of an Australian navy"; he was sure that no "man in Australia would shirk his duty in defending his country", SWG speech to Warwick farmers' dinner, 11 Feb. 1885, Warwick Examiner and Times, 14 Feb. 1885.

106. SWG to J. Service, Premier Victoria, 18 Feb. 1885; see SWG to Service 12 Feb. 1885; Service to SWG, 13 Feb. 1885; W. Bede Dalley to Governor, Queensland, 14 Feb. 1885 and reply, 15 Feb. 1885; G. A. French to Col. Sec., 17 Feb. 1885; J. Tyson to SWG, 21 Feb. 1885, and subsequent correspondence (including printed) on Sudan file, 85/5821, COL/A433.

107. Admiral Tryon to Governor, Queensland, 15 and 18 Mar. 1885, confidential, GOV/NZ.


109. SWG, 31 Mar. 1885, on Mayor Townsville to Premier, 31 Mar. 1885, 85/2160, filed on
Notes to pages 133-39  383

below; Griffith thought it "quite premature" to decide whether the government should pay for the evacuation of women and children from Cooktown; he was sure citizens would "do their duty" like other European citizens without considering personal pecuniary loss, 18/4/85, on Mayor Cooktown to Col Sec., 17 Apr. 1885, 85/2660, COL/A420.

110. See files 85/3077 (Overland Telegraph); 85/3285 (Mackay and Rockhampton) 85/4846 (Townsville); COL/A422; 423; 429.

111. Tryon to SWG, 28 Apr. 1885, 85/3045, COL/A422.

112. H. Parkes to SWG, 13 Mar. 1885, 85/1806, filed on 85/2686, COL/A443.

113. SWG, 5 June 1885, on Musgrave to S. of S., 13 June 1885, C.O. 234/46, 13766.

114. Tryon to SWG, 6 May 1885, MSQ 186, pp. 134–38; there are 20 personal letters between 6 May 1885 and 22 Jan. 1887, MSQ 186; Tryon continued to write while in England.

115. Sent to all colonial premiers by SWG, 2 June 1885, 85/1862, COL/930.


118. Musgrave to SWG, "we have carried our point re white ensign for Gayundah", 5 Aug. 1886 [written from London], MSQ 186, pp. 506–9.

119. G. A. French to Col. Sec., 5 Nov. 1885, 85/8343, COL/A443.


121. SWG, diary, 26–28 Apr. 1886.

122. W. T. Wright, Senior Naval Officer to Col. Sec., 22 June 1886, 86/4729, COL/A469.

123. SWG, 15 Apr. 1886, on Commandant to Col. Sec., 13 Apr. 1886, 86/2891 on 86/3680, COL/A465.


Chapter 6. Rethinking Priorities

1. See note 65 below.


3. Earl of Onslow, Parliamentary Under-Secretary, to SWG, 1 Apr. 1887, MSQ 186, pp. 645–46.


5. Berry was Victoria's agent-general and a member of the Victorian delegation with Service, Deakin and James Lorimer; see J. A. La Nauze, Alfred Deakin, vol. 1, pp. 95–104; Deakin, Federal Story, p. 22, from report in Argus, Melbourne, cited La Nauze Alfred Deakin, p. 103.


9. For memorandum on the Proposed Scheme for Increase of Imperial Squadron in Australian Waters, H. T. Holland, printed papers for conference; appendices include Admiralty plans, Sept. 1885, and 25 Feb. 1887 with Tryon's letters 27 Mar. 1885, 24 Dec. 1885, 24 Apr. 1886, 3 May 1886 [results of conference] 28 and 30 May 1886; see Report of Proceedings [printed]; H. T. Holland, 23 July 1887, 6973/87, COL/A515; Griffith was also prominent in discussions on the defence of Torres Strait [Thursday Island] and Albany.


11. Copy of address on papers laid before the Colonial Conference, 87/6973, COL/A515.


384 Notes to pages 139-45


15. A bill from Athill for the period 1887–93 amounted to £227.13.6 (enclosure in letter 20 June 1893, H. E. Griffith to SWG, MSQ 186, p. 119); first letter C. H. Athill to SWG, 5 July 1887, MSS 363/3X, pp. 6–8; later letters from 1888–95 (12 in all); Mary Smith to SWG, 5 Nov. 1866, MSS 363/3X, pp. 2–4; H. E. Griffith to SWG, 7 Nov. 1890, MSS 363/3X, pp. 51–55, this began a correspondence that lasted to 1919 with increasing sharing of confidences (41 letters survive).

16. Judge G. Williams [Llantrisant] to SWG, 18 Apr. 1887; J. W. R. Williams, Mayor of Brecknock [Brecon] to SWG, 27 Apr. 1887; W. M. Johnston, Secretary, to SWG, 18 Apr. 1887 (National Institute); E. V. Evans, Secretary, National Eisteddfod Association to SWG, five letters Apr.–May 1887, MSQ 186, pp. 667–9, 688–90, 672–73, 691–701, 709–12.


18. SWG, diary, 4 June 1887; see later correspondence with Lady Mary Lamington as to wearing of ribbons, 30 May 1901 and 28 May 1902, MSQ 190, pp. 323–26, 851–54 and with H. E. Griffith; they discussed Griffith's honours, for instance when he applied for a grant of supporters after he received the GCMG in 1893, 19 Apr. 1895, MSS 363/3X, pp. 145–48.


20. SWG diary, 14 May–1 June 1887; Vice-President Pullman Palace Car Company letter to Agents and Conductors, MSQ 186, p. 716.

21. See chapter 8; details from diary.


24. The Royal Bank was launched in Feb. 1886, see QNB/A/RBQ/061/11; SWG’s brother Edward Griffith was its second manager — and his brother-in-law, F. M. Lascelles an auditor; SWG held no shares while premier; Drury to London Manager, 22 Nov. 1887, A/Q.N.B./652; Drury to SWG, 3 Feb. 1888, p. 177; Drury was writing to McIlwrath at the time, see letters 26 Dec. 1887 and 20 Jan. 1888, A/Q.N.B./809–2, and see also Garrick to SWG, 10 Nov. 1887 and 27 Jan. 1888, MSQ 187, pp. 243–61, 270–71, 805/14, Box 1.

25. Deputation 25 July 1887; he also received a deputation from the Queensland Employers’ Association on 18 July, opposing Chinese on social, economic and political grounds; SWG minute, 7 July 1887, on Secretary, Queensland TLC to Col. Sec., 25 June 1887, all filed on 87/6523, COL/A512; delegates of anti-Chinese leagues (14 from Queensland and 1 from NSW) to SWG, 26 Oct. 1887, 88/8411, COL/A522.

26. SWG minute, 16 Aug. 1887, on E. Holland for residents of Clermont to SWG, 6 Aug. 1887, 87/6403 on 87/6406, COL/A512; petition and council resolution [10 Aug.] enclosed.

27. B. B. Moreton minute, 9 Feb. 1888, telegram Geraldton to Col. Sec., 22 Dec. 1887, 87/10156, COL/A530; file includes depositions.

28. SWG to Musgrave, 24 Mar. 1888, on Musgrave to S. of S., 27 Mar. 1888, C.O. 234/49, 8913; a reply to a British circular request on legislation, J. Bramston, 5 May, described this as "a temperate, well written letter".

29. Kimberley telegraph station near Normanton; A. Rutledge minute, 5 Jan. 1888; details including depositions of enquiry of 24 Nov. 1887, on file 88/105, COL/A531.

30. SWG, "recommend remission under Offenders Probation Act", 2 May 1888, on Associate to Chief Justice to Attorney General, 1 May 1888, case of R. v. Thomas Hamilton, 88/4018, COL/A544; see also case of "Condamine Dick", Aboriginal who murdered another Aboriginal, SWG "I advise remission", 12 May 1888, on Associate to Chief Justice to Col. Sec., 7 May 1888, 88/4300, COL/A545.

31. SWG, 2 May 1888, J. Walker, Colonel Salvation Army, Brisbane, to Chief Sec., 2 May 1888, 88/4109, on 88/4166, COL/A545.

32. A. Hinchcliffe to Colonial Treasurer, 15 Feb. 1888 and to Col. Sec. 29 Feb. 1888, 88/1473, COL/A535; G. S. Casey, Secretary, union to Registrar Trade Unions, 12 Dec. 1887; see other correspondence on files 88/1905, COL/A537 and 88/2677, COL/A540; Griffith had agreed in Aug. 1887 to see a deputation from the committee advocating state-aided village settlement to alleviate unemployment, 87/6561, COL/A512.

33. Griffith was closely involved in the intense paper war of Nov.–Dec. 1887; he was mainly
legalistic and detached especially in comparison with Parkes and Gillies; Parkes called Melbourne “Bear-grass, Batmania and . . . other uncouth names”; Griffith on 5 Jan. 1888 agreed “no useful purpose” would be served by further publication; correspondence collected on 87/10205, COL/A530.


35. Fysh to SWG, 17 Aug. 1887, MSQ 187, pp. 168-73; Everill to SWG, 28 Apr. and 6 May 1887, COL/4; Bevan to SWG, 29 July and 30 Aug. 1887, 87/6149, COL/A511 and 87/6753, COL/A513.

36. Wise to SWG, 6 Sept. 1887, MSQ 187, p. 181 and 1 Oct. 1887, COL/4; SWG to Wise 31 Aug., 29 Sept., COL/4; for details of unanswered official communications to Parkes (e.g., 26 Aug.) and with Gillies see COL/4.


43. See Garrick to S. of S., 1 Apr. and 11 May 1887, C.O. 234/48, 6193 and 9137.

44. Minutes of SWG, 3, 24, 27 Oct. on letters from H. T. Wright; Wright, Senior Naval Officer to Under Col. Sec., 8 July, 16 July, 30 Aug. 1887, 87/6797, COL/A513; 21 Oct. 1887, 87/8307, COL/A521; to Chief Secretary, 30 Sept., 24 Oct., 27 Oct., 15 Nov, 1887, 87/9049, COL/A525 (this file also includes printed copy of correspondence).

45. Musgrave to SWG, 5 Nov. 1887, MSQ 187, pp. 236-42; this was a private letter but Musgrave assured Griffith he was “quite at liberty to show” it to his colleagues; Palmer to S. of S., 29 Oct.1888, C.O. 234/49, 24408.

46. SWG, 4 Nov. 1887, minute on Wright to Chief Secretary, 4 Nov. 1887, 87/8714, COL/A523.


49. 51 Vic. No. 10, assented to on 16 Nov. 1887, Electoral Districts Act; Garrick to SWG, 16 Nov. 1887, MSQ 187, pp. 243-61; see Registrar-General to SWG, 15 Sept, 1887, sending tables showing population in proposed new districts, 87/7257, COL/A517.

50. SWG minute, 18 Apr., on details of motion in J, Grant (Honorary Secretary, Anti-Chinese League) to SWG, 17 Apr. 1888; SWG, 11 Apr. 1888, on Grant to SWG, 11  Apr, 1888, and Under-Secretary for Mines to Gold-Warden, Croydon, 12 Apr. 1888, 88/3481, C.
Downey, Secretary, Croydon branch, Australasian Miners' Association to SWG, 10 Apr. 1888, 88/3120 (Griffith questioned the truth of this report); protest by George Ah Hoy to SWG, 30 Apr. 1888, and 5 May, 88/4084 and 4236; W. J. Cusack, warden, to Under-Secretary for Mines, 4 May 1888, 88/4340; H. M. Chester, police magistrate, Croydon, to Chief Secretary, 10 and 14 May, 88/4493-4532; petition to Chester, 10 May 1888, and SWG minute [very judicious], 29 May 1888, on Chester to Col. Sec., 11 May 1888, 88/4816, all collected on 88/5693, COL/A549; SWG minute (political motives), 8 May 1888, on G. Lukin, police magistrate, Rockhampton, to Col. Sec., 7 May 1888, 88/4318 and (accepting) 10 May 1888 on Lukin to Col. Sec., 9 May 1988, 4384, COL/A545.

59. “result of election chiefly owing to disloyal financial organizations alliance with opposition” SWG to Garrick, MSQ 187, p.365; “hatred of England” SWG to Deakin, 29 May 1888, Deakin papers. National Library, 1540/2134; “combination”, Deakin to SWG, 23 May 1888, MSQ 187, pp. 354-61; see also Drury to R. G. W. Herbert, 2 July 1888, he did not believe that McLlwraith would be “very disloyal” but referred to a “disloyal spirit . . . The Sydney Bulletin has an immense circulation”, A/QNB/651; an anonymous letter to JG, spoke of SWG as a “patriotic, unselfish, noble and gifted statesman for good”, MSQ 187, p. 351.

60. For Sept. crisis see note 82 below; see MacGregor to SWG, 19 Mar. 1889, “I should not wonder if a conservative coalition party is found a necessity in Q** to prevent fanatic separation and woes untold to the community”, MSQ 187, pp. 521-28.

61. Palmer (Acting Governor) to SWG, 1 Nov, 1889; “the Ch, Sec, has asked me to see you with a view to see if some arrangement cannot be come to to terminate this present crisis”, MSQ 187, p. 558; SWG diary records seeing Morehead and A. J. Thynne (Minister for Justice) on 2 Nov., and “met Morehead and settled deadlock”, on 4 Nov.

62. Copy of article in MSS 363/8X.

63. Phrase used in The Centennial Magazine, 1, 12, July 1889, p. 841, Q059/C, Mitchell Library; A. Stephen to SWG, 12 Oct. 1889, MSQ 187, pp. 554-57 [Stephen, however, believed that if the proposed division could be made practicable every good citizen would support it]; W. Lane to SWG, 31 Dec. 1888, MSQ 187, pp. 516-18; W. C. Windeyer to SWG, 9 Dec. 1889, MSQ 187, pp. 559-72, SWG, reply, 15 Dec. 1889, Windeyer papers, 186, box 9 [he sent Griffith a copy of Bellamy’s Looking Backward which Griffith had already read]; list of those to whom article sent, MSQ 187, p. 537 (includes Gladstone, C. Dilke, the Archbishop of York, S. Way, Inglis Clark, Lord Carrington, Deakin and G. Higinbotham).

64. President, Townsville branch Federated Wharf Labourers’ Union, 25 July 1889, MSQ 187, p. 541; Bernays, Queensland Politics, p. 119.


66. J. B. Dalton, “An Interpretative Survey”, in Prelude to Power, ed. Murphy, Joyce and Hughes, pp. 5-6; Henry George replied to SWG [n.d.] May 1890, MSQ 187, p. 658 and saw him on 10 May [diary 1890]; George wrote after his return to the USA thanking Griffith for copies of his bill, 9 Sept. 1890, MSQ 187, p. 702.

67. SWG to JLM, 24 Apr. 1890, Field/Musgrave papers, DUL; Buzacott to SWG, 9 June 1890, MSQ 187, pp. 655-57; Buzacott wanted the letter destroyed.

68. SWG diary, 1890, records being with McLlwraith at a meeting on 26 June; introducing his bill on 22 July; “consulted with McLlwraith” on 25 July; defeat on 6 Aug.; and governor sending for him on 7 Aug.; Griffith moved the amendment and was supported by McLlwraith and others of Morehead’s supporters, Norman to S. of S., 8 Aug. 1890, C.O. 234/51, 18220.

69. See examples below for Gold Fields Act, partnership, local option and practice cases; see also Bennett v. No. 5 North Phoenix Gold Mining Co. Ltd, 3 QLJ, 182 [patents]; Lancaster v. Fraser, 3 QLJ, 197 [probate]; Naumberg v. Executors of Alberston, 3 QLJ, 125 [property]; Mulvena v. Commissioner for Railways, 3 QLJ, 108 [contract]; in re J. W. Rutter, 3 QLJ, 105 [insolvency]; Elverson v. Elverson, 4 QLJ, 25 [divorce]; Gorrie v. Goldsmith, 4 QLJ, 17 [torts]; R. v. John Deane, 3 QLJ, 195 [local government authority]; Kennedy v. Macmehan, 3 QLJ, 119 [Stamp Duties].

70. Hall and others v. Gorrie, 3 QLJ, 113.

71. Meyenberg v. Pattison and others, 3 QLJ, 184.

72. R. v. Yaldwyn et ors, 3 QLJ, 144.


74. Without detailed records, the reasons for his difficulties remain speculative; a few
financial papers survive in MSS 363/11X; he held at least one gold-mining lease, in Etheridge Gold Fields, from 9 Sept. 1875 with fellow Liberals, including Mein, Hemmatt and Macalister, MN/NZ, Q.S.A.; details of Townsville land transactions from Townsville Titles Office (deals on certificates of title, vol. 69, folios 20–50 and 84); I am grateful to Owen Griffith, grandson of Sir Samuel, for showing me papers in his possession, which include a letter from L. Walker of Weston-super-mare, 1 May 1893, "I am so sorry to hear of your losses".


76. Details from financial papers, MSS 363/11X; these include reference to a dispute over shares in the Brisbane Telegraph Newspaper Company, see letters from T. Brentnall to SWG, 1889–1910; Griffith had bought 150 shares at £18 a share in land on 22 Nov. 1885 (paying £2,700) and took a ¼ share in land at Wellington Point. Brentnall queried if Griffith’s claims were "quite harmonious with the views you have recently been expounding as to the rights of labour and capital. You seem to expect to share in earnings in which you had neither trouble with nor responsibility" [27 Aug. 1889].

77. Federal Council papers, 1889; see diary for meetings details.


79. Federal Council papers; see Parkes to SWG, 20 Dec. 1889, MSQ 187, pp. 577–79; Griffith was west of Melbourne from 3 Jan. to 4 Feb. 1890.


86. Griffith diary, 1889, 18, 19–22 Mar.; F. A. Abel, Secretary Imperial Institute to SWG, 31 July 1889, MSQ 187, pp. 542–43; Garrick to SWG, 2 Jan. 1890, MSQ 187, pp. 583–94.

87. JLM diary, Field-Musgrave papers, DUL; Musgrave to SWG, 22 Sept. 1899, MSQ 190, pp. 49–52.

89. JLM to SWG, 22 Oct. 1890, MSQ 187, pp. 732–34; reply SWG to JLM, 7 Dec. 1890, Field-Musgrave papers.

90. JLM to SWG, 8 Feb. 1890, MSQ 187, pp. 613–19.

91. SWG to JLM, 24 Apr. 1890, Field-Musgrave papers.


Chapter 7 Compromises

1. See note 16 below; in the McIlwrath, Griffith was premier, chief secretary and attorney-general; H. McIlwrath was treasurer; W. O. Hodgkinson, secretary for mines and public instruction; T. O. Unmack, secretary for railways and postmaster-general; H.
Tozer, colonial secretary and secretary for public works; T. J. Byrnes, solicitor-general; W. H. Wilson, minister without portfolio; the only survivor of Morehead's cabinet was A. S. Cowley, who was secretary for public lands and agriculture.


3. SWG minute, 21 Aug. 1890, on postmaster to Under Col. Sec., 19 Aug. 1890, 90, 90/8928, COL/A626.

4. SWG minute, 21 Aug. 1890, on Hinchcliffe, secretary ALF to SWG, 20 Aug. 1890, 90/8944, COL/A626.

5. SWG minute, 5 Sept. 1890, on T. Playford to Chief Secretary, Queensland, 30 Aug. 1890, 90/9408, COL/A628.

6. "The government does not consider themselves justified in interfering in any way in the present struggle", SWG minute, 11 Sept. 1890 on E. T. Lowry [Townsville] to SWG, requesting prevention of new migrants on Jumna being used as strike-breakers; 90/9686, COL/A629; no interference with "ordinary course of law", SWG minute, 24 Sept. 1890, on Beor [C.P.S. Cooktown] to Under Col. Sec., 12 Sept. 1890 (re Archer); 90/9966, COL/A629; "Members of the Defence Forces are not to be called on as Special Constables without special reference to me", SWG minute, 29 Sept. 1890, on Major E. Druitt to Commandant, Queensland Defence Force, 24 Sept. 1890, 90/10065, COL/A630; see also 90/11536, COL/A636.

7. List of commissioners in SWG's handwriting, n.d., attached to 91/229, COL/A645; see Hinchcliffe to SWG, 7 Jan. 1891 requesting representation of labour and capital; no legislation was introduced until 1896.

8. SWG to A. H. Palmer, n.d. [c. 20 Feb. 1891], strike folder, Col. Sec.'s files.


10. See "Short Statement showing telegrams forwarded" and copies telegrams, ibid.

11. See Murphy, Joyce and Hughes, Prelude to Power, Appendix A, 5, for full texts, pp. 268–70 [these were published in Brisbane Courier, 2–4 March 1891]; Griffith had told the deputation from the ALF that "the necessary consequence of the line of action they were pursuing would be to destroy confidence diminish employment and lower wages", SWG to JLM, 11 Oct. 1891, Field-Musgrave papers; see H. Kenway "The Pastoral Strikes of 1891 and 1894" in Prelude to Power, ed. Murphy, Joyce and Hughes, pp. 111–19.

12. Some telegrams quoted have had punctuation [notably full-stops] added; Tozer referred to Hinchcliffe's "insolent bombast"' telegrams Tozer to SWG, 2, 3, 4, 5, 6 Mar. 1891; F. C. B. Vosper was editor of the Charters Towers Australian Republican and journal of the Trade Unions of North Queensland; it appeared from July 1890 to Aug. 1891; see Prelude to Power, ed. Murphy, Joyce and Hughes, p. 325.

13. Telegram SWG to Tozer, 8 Mar. 1891.


15. Ibid., 13, 14, 15 Mar. 1891

16. Ibid., 15 Mar. 1891; SWG to Tozer 16 Mar. 1891.

17. Tozer to SWG, 16 Mar. 1891 [representing Ahern]; 2nd telegram 16 Mar. 1891 [his reply to SWG].

18. Tozer to SWG, 17 Mar. 1891; SWG to Tozer 17 Mar. 1891 (two telegrams).

19. Tozer to SWG, 18 Mar. 1891 [includes Hodgkinson's dissent].


21. SWG and McIlwraith to Tozer, 21 Mar. 1891.

22. SWG minute 21 Mar 1891, on Secretary, United Pastoralists Association to Col Sec., 18 Mar. 1891, 91/3420, COL/A652.
23. Tozer to SWG, 21 Mar. 1891, 4.17 p.m.
24. Ibid., 21 Mar. 1891, 7.40 p.m.
25. SWG and McIlwrath to Tozer, 21 Mar. 1891; Tozer to SWG, 21 Mar. 1891, 10.40 p.m.
26. SWG and McIlwrath to Tozer, 22 Mar. 1891.
27. For 1894 strike see Kenway, in Prelude to Power, ed. Murphy, Joyce and Hughes, pp. 121-23; the Peace Preservation Act was not enforced as the strike was all but over before it was given assent on 25 Sept.; for Charles Powers', then MLA for Maryborough, statement during Queensland 1894 debate, see Joe Harris, The Bitter Fight, pp. 96-100.
28. Tozer to SWG, 24 Mar. [the day cabinet met]; 28 Mar. [details], 31 Mar. [50 arrests and 1,000 military] 1891.
29. SWG to Tozer, 6 Apr. 1891.
30. Sydney Morning Herald, 10 Apr. 1891.
31. NSW Royal Commission on Strikes, Minutes of Evidence, Thursday 9 Apr. 1891, pp. 272-80; questions numbered 7157-7386; cited 7167 [common interests]; 7204 [fair immediate recompense]; 7211 [the president, Dr Garran suggested 'immediate subsist']; 7221 [whaling voyages]; 7235 [natural minimum wage]; 7251 [rule of thumb]; 7278 [strikes]; 7288 [revolution]; 7318 [without a revolution]; 7340 [distinct sets]; 7359 [doing his best]; 7370 [honest man, a reply to F. H. Trouton, of the Australian Steam Navigation Co.].
32. SWG to JLM, 21 Apr. 1891, Field-Musgrave papers; 1891 diary for movements.
33. SWG minute, 18 May 1891 on French to Chief Sec., 14 May 1891, 91/5343, COL/A658.
34. SWG minute, 21 May 1891, on residents Mt Cotton to E. I. Stevens, MLA Logan, 91/5676, COL/A659; SWG minute, 11 June 1891, on secretary Pastoralists Union of Victoria to SWG, 10 June 1891, 91/6518, COL/A662; he disagreed strongly with a Helidon meeting that alleged he had placed armed forces at the disposal of the pastoralists, SWG minute, 13 May 1891, on chairman of Helidon meeting to Chief Sec., 91/5306, COL/A658; he had merely initialled [on 8 May], a claim from the Townsville ALF that the government's enforcement of its proclamation was "extreme . . . will cause bloodshed", 91/5054, COL/A657.
35. Tozer's dealings with a Newcastle importer of guns, 91/6854, COL/A663; see Tozer's minute, 23 June 1891 concerning aid for transporting strike-breakers, 91/7140, COL/A664; details of troops and events, see Norman to S. of S., 12 and 22 May 1891, C.O. 234/52, 12601 and 13173; for trials [161 arrests] see Kenway in Prelude to Power, ed. Murphy, Joyce and Hughes, p. 118; Harris Bitter Fight, pp. 86-88; Griffith probably knew that, with doubtful legality, letters to the arrested strikers were impounded, see James Gillespie to "dear Jim" [perhaps Murphy] 10 May 1891, "we will win before long. The pastoralists cannot hold out much longer", 91/5923, COL/A660; Glassey's request won support from the Rockhampton ALF, and Maryborough and Charters Towers public meetings, but Griffith merely initialled their complaints, 91/8053, 8089, 8090, COL/A667.
36. Griffith showed little sympathy with a deputation from the Chamber of Commerce on 4 Sept. 1891 which opposed the bill: see minutes on Chamber of Commerce to Chief Sec., 26 Aug. 1891, 91/9718, COL/A670; Brisbane Courier, 5 Sept. 1891, supported the bill.
37. See R. Lawson, Brisbane in the 1890s, pp. 38-40; for government relief to unemployed see report to 14 Mar. 1891, 91/3135, COL/A652; SWG minute 12 Aug. 1892 on 92/9306 [on 92/12585], COL/A713 [Biggenden]; SWG minute 21 Feb. 1893 on J. Douglas to Chief Sec., 3 July 1893, 93/1795 (on 93/2459), COL/A726.
38. See bizarre file with reports from John E. Wirth-Marsh, PRE/127; he had been interviewed by Griffith on 1 Oct. 1891 and Griffith initialled some of his reports which mentioned Labor candidates; the file was moved from the colonial secretary's in-letters to the premier's records; Griffith was challenged by Glassey in the Legislative Assembly to give the names of those from whom he was getting information, QPD, 65, 1891, pp. 2074-75, 2098; citing Parry-Okedeen, 18 Dec. 1891.
39. SWG minute, 5 Apr. 1892, on secretary Ipswich and West Moreton Workers' Political Organization to Col. Sec., 26 Mar. 1892, 92/3636, COL/A692.
40. Resolutions of committee of unemployed, 2 June 1892, 92/6810, COL/A699; Brisbane Telegraph report, 4 June 1892.
41. SWG memorandum, 6 June 1892, attached to Brisbane Telegraph report, 4 June 1892; see debate in parliament, 7 June, and unsympathetic views of Norman to S. of S., 1 July 1892, C.O. 234/53, 15892.
42. See Norman to S. of S., 17 Nov. 1892 (2 despatches), C.O. 234/53, 24737 and 24738.
43. Griffith was to include a sugar planter, A. S. Cowley, in his Griffilwraith cabinet; see SWG address to electors 12 August 1890 in Norman to S. of S., 13 Aug. 1890, C.O. 234/51, 18572; members of a new ministry had to vacate their seats and be re-elected.
44. SWG minute, 18 Aug. 1890, on H. W. Looker, Govt. Agent to Officer-in-Charge Pacific Island Immigration, 6 Aug. 1890; SWG minute, 27 Aug. 1890, on W. McD. Miles to Chief Sec., 16 Aug. 1890, 90/8516, COL/A625, 90/8862, COL/A626.
45. SWG memorandum, 9 May 1891 ordering preparation of circular, 91/5251, COL/A658; circular and 15 replies collected on F. W. Galloway Immigration Agent to Under Col. Sec., 13 Oct. 1891, 91/1706, COL/A647, include J. Ewan Davidson, Mackay, to F. W. Galloway, 13 July 1891; W. Broome, Yeppoon, to F. W. Galloway, 15 June 1891.
49. T. Pugh, Bundaberg, to SWG, 20 Feb. 1892, MSQ 188, pp. 257-62; identified those who booed him before his champagne luncheon with the planters; see W. Brookes [the strongest consistent opponent of black labour] to SWG, 22 Mar. 1892, MSQ 188, pp. 299-300, he accused Griffith: "politics came first and ethics a long way behind"; compare Marie Cowley [the wife of Griffith's minister]: Griffith's "motives ennoble the career of politics", 22 Feb. 1892, MSQ 188, pp. 277-80; see also positive support from J. Cameron [pastoralist and company director] to SWG, 26 Feb. 1892, MSQ 188, pp. 281-83; Charles Nicholson to SWG, 20 May 1894, MSQ 189, pp. 5-8, R. M Stewart to SWG, 18 Feb. 1892, MSQ 188, pp. 249-52, S. J. Way to SWG, 20 Feb. 1892, MSQ 188, pp. 265-66.
51. Norman to S. of S., ibid.
52. 57 Vic. No. 38; copy regulations on 92/6340, COL/A698; see Norman to S. of S., 1 Apr. 1892, C.O. 234/53, 9, 374 and SWG, 20 May 1892 on Norman to S. of S., 20 May 1892, C.O. 234/53, 12890.
55. Correspondence collected on 92/7631, COL/A701, includes SWG's draft, 6 June 1892.
56. Fysh to SWG, telegram, 2 July 1892, ibid.
57. Playford to SWG, telegram, 7 July 1892, ibid.
58. SWG to JLM, 20 Nov. 1892, Field-Musgrave papers; he saw Flora Shaw on 23 Sept, 8, 13 and 30 Nov.; see Flora Shaw to SWG, 26 Sept. and 30 Nov. 1892, MSQ 188, pp. 425-26, 561-62; she wrote "I have never in any country seen the lot of the average manual labourer so well cared for", The Times, 27 Dec. 1892 (comments in CO, 234/55, 52), reprinted in Brisbane Courier, 29 Dec. 1892; see also Sir Henry Loch to SWG [sending letter of introduction for Flora Shaw], 26 Aug. 1892, MSQ 188, pp. 410-4; and R. S. Stewart [from London, "you must have treated her well in Queensland"], 29 Dec. 1893, MSQ 188, pp. 783-86.
62. SWG to JLM, 11 Oct. 1891, Field-Musgrave papers; see J. Garrick to SWG, 19 June 1891, MSQ 188, pp. 95-110 and Hume Black to SWG, 15 July 1891, MSQ 188, pp. 121-23.
63. For The Times report of interview, 6 May 1892 and discussion in C.O. see C.O. 234/55, 8559A; Knutsford to SWG, 31 May 1892, MSQ 188, pp. 341-44; see C. R. Doran, "North Queensland Separation", for analyses of arguments.
64. SWG to Governor, 16 June 1892, enclosed in Norman to S. of S., 17 June 1892, C.O. 234/53, 15017.
66. SWG, during debate, on C.O. 234/54, 20277; see clash between Griffith and Black on principle against expediency; see QPD, 1891 and Norman to S. of S., 1, 5, 10, 11, 20, 20, 25 Aug. 1892, C.O. 234/53, 18252, 18184, 15982, 18433, 16615, 19406, 19412.
68. SWG in debates, reported, on Norman to S. of S., 1, July and 1 Aug. 1892, C.O. 234/53, 15892 and 18252.

Correspondence in 91/01962, COL/A648; SWG’s interview with Melbourne Daily Telegraph reported in Evening Observer, 19 Feb. 1891 which includes J. L. Rentoul’s letter to SWG. 4 Feb. 1891; the original is on the file, Griffith minuted, 19 Feb. 1891, that he had replied privately and kept no copy.

71. Section 14, 55 Vic, No. 31; see SWG minute, 1 Oct. 1890, on D. Gillies, Premier Victoria, to Premier Queensland, 8 Sept. 1890, 90/9604 (on 90/14185), COL/A641.

72. Correspondence in 91/01962, COL/A648; SWG’s interview with Melbourne Daily Telegraph reported in Evening Observer, 19 Feb. 1891 which includes J. L. Rentoul’s letter to SWG. 4 Feb. 1891; the original is on the file, Griffith minuted, 19 Feb. 1891, that he had replied privately and kept no copy.


78. Joyce, MacGregor, pp. 109–19; MacGregor was wrong in believing that Griffith was wholly on his side.

79. SWG to JLM, 13 Mar. 1892, Field-Musgrave papers, diary 1891.
82. See Votes and Proceedings of Federal Council, 1893; chap. 8; diary, 1893.
83. See chap. 8 note 50.
84. Provincial Grand Master of the Most Ancient and Honourable Society of Free and Accepted Masons of Queensland, nominated 12 June 1893; installed 26 Oct. 1893; Order of Procedure at the Installation and The Keystone, 2, 8 Nov. 1893, MSQ 188, pp. 733–40 And 747–55; Griffith’s address gave some hints as to his view of the importance of masonic principles: “It would be a sad thing for masonry if it were to degenerate to the mere observance of idle forms and ceremonies; ... the outward expression of deep principles which they should never forget ... love, relief or charity, and truth ... the great business of the order was to cherish and put those principles into practice”; he claimed that these principles did not separate employers or employed, and that masonry was in its origin a trades union possessing all the good qualities of trade unionism.
85. Brisbane Grammar School records, held at the school.
86. Llewellyn’s report on general register, pupil record, 1890, Brisbane Grammar School;
392 Notes to pages 181-84

diary 24 Feb. 1891, 'signed Llewellyn's Judices of Apprenticeship and paid £100 premium'; Percy's record also on general register, with no comment apart from 'went to Sydney University', 1889-94.

87. Brisbane Girls' Grammar School records, held at the school; Eveline attended from 1884-88; Nellie [Helen Julia] from 1887-91; Edith from 1892-97 and Gwendoline from 1892-98; their scholastic records were fair: Eveline ranging from 1st of 19 to 27th of 32; Nellie from 1st of 34 to 8th of 19; Edith from 4th of 21 to 10th of 32; Gwendoline from 1st of 14 to 15th of 32.

88. See H. J. Gibbney 'Charles Lilley' in Queensland Portraits, ed. Murphy and Joyce, pp. 71-91 cited p. 84.

90. Queensland Investment and Land Mortgage Company v. Grimley, QLJ, IV, 224; Griffith told Jeanie Musgrave that he had been asked to appear against McIlwrath: 'of course I refused to appear against my colleague. Would you believe it Sir Charles Lilley tried to persuade me to do so. His conduct in the case is the subject of very unpleasant comment', 13 Mar. 1892, Field-Musgrave papers; for McIlwrath's concern see letter to Drury, 3 Feb. 1893, A/QNB/809/4: 'the cases are hurting the Q.N. Bank . . . although we will triumph in the end some of us might be wiped out virtually and otherwise before that triumph comes'.

91. The judgment restored the findings of the jury in the original case; a special act, 56 Vic. No. 10, was passed by the Queensland parliament to ensure that Windeyer was competent to sit, Griffith referred to this as an act in a "federal spirit"; for invitation to Windeyer see SWG to W. Windeyer, 4 Sept. 1892. "It would be a very great pity if the proposal should fall through from a Federal point of view as well as for many other reasons and I think you are the judge who should come", letter in possession Judge Victor Windeyer, cited in draft of his article, "A Presage of Federation"; a later private letter, W. Windeyer to SWG, 12 Nov. 1892, refers to his "hard work at Brisbane", MSQ 188, pp. 493-96.

92. SWG to JLM, 20 Nov. 1892, Field-Musgrave papers.

93. In re G. C. Willcocks and Queensland Railway Commissioners (cited at p. 187), QLJ, IV, 182; the judges were Lilley, Harding and Real.


95. SWG to JLM, 20 Nov. 1892, Field-Musgrave papers.

96. W. Kinnaird Rose to SWG, 17 Nov. 1892, MSQ 188, pp. 517-20.

97. 'Oh! the loss to you and now especially. His affection that I have often heard him express for you was strong but keen-sighted, and his advice could help in many a moment of anxiety', JLM to SWG, 22 Oct. 1890, MSQ 187, pp. 732-35; Brisbane Courier, 1, 7 July 1890; Griffith was an executor for Mein, MSS 363/11; see Annie T. Mein to SWG, 2 Sept. 1890, MSQ 187, pp. 696-97; see 1891 diary for father's death, and letters of sympathy, MSS 1888, pp. 141-84 [include Governors Norman and Bowen, Lord Knutsford, JLM, Secretary Colonial Missionary Society]; see 1892 diary for mother's [and niece's] deaths: 'though you have expected it, and can't on her account regret it, still a mother's death . . . makes one feel the last link of one's young life', Alice Norman to SWG, 18 Apr. 1892, MSQ 188, pp. 303-5 [and other tributes]; for SWG's tribute to Macrossan, see Official Report of the National Australasian Convention Debates, 31 Mar. 1891, p. 520; Griffith after admitting their seventeen years of opposition ("strong and even bitter") in parliament claimed that 'there was no man in the colony of Queensland for whom I entertained a higher regard as an honourable opponent and a true servant of his country'.

98. See financial papers, MSS 363/11X.

99. SWG to JLM, 20 Nov. 1892, Field-Musgrave papers.

100. See chap. 8 for framing federal constitution, and open speculations in later correspondence, e.g. J. P. Boucaut to SWG, 17 Dec. 1897, MSQ 189, pp. 377-80.

Chapter 8. Federation

2. James Service speaking on 6 Feb. 1890 first used the phrase referring to the need for a common fiscal policy, see La Nauze, *Making the Constitution*, pp. 11, 39.
3. "Sir Henry Parkes' behaviour is very curious. He is consumed with vanity but we cannot do without him. I, for one, am prepared to let him assume any airs he pleases, so long as he works with those of us who desire Australian union", SWG to JLM, 24 Apr. 1890, Field-Musgrave papers.
5. For Parkes’s resolution, see *Official Record of the Proceedings and Debates of the Australian Federation Conference, 1890* [Official Record, 1890], p. 33.
7. "he was . . . the best informed of all of us on the subjects on which knowledge was useful, and especially with regard to the American Constitution", SWG to JLM, 24 Apr. 1890, Field-Musgrave papers; see also tribute after Macrossan’s death, *Official Report of the National Australian Convention Debates, 1891* [Official Report, 1891], p. 520; for Clark’s speech, see *Official Record, 1890*, pp. 96-114, Deakin, pp. 74-95.
10. La Nauze, *Making the Constitution*, p. 34; see chap. 6 note 2.
14. Ibid., p. 57 (‘‘100 years’’ and ‘‘propose’’); p. 59 (ultimately).
15. Ibid., p. 74 (any kind); p. 78 (different majorities).
16. SWG diary, 1891.
18. Ibid., p. 275.
19. Ibid., pp. 338-39 (list); p. 338 (necessary or incidental); p. 329 (separation).
20. Ibid., p. 339 (objects); p. 347 (every little thing); p. 370 (voting).
21. Ibid., pp. 377-78 (powers Queensland’s Houses).
22. Ibid., p. 430 (impossible); p. 428 (revolution); p. 380 (Downer’s notion); see 1891 SWG diary for meeting with Moran.
23. *Official Report, 1891*, p. 462 (consensus); p. 456 (analysis to British); pp. 446-47 (closet . . . lamp); p. 434 (party).
25. Ibid., p. 489; pp. 477-78 (Grey's motion).
27. SWG to JLM, 21 Apr. 1891, Field-Musgrave papers; see also SWG to JG, 2 Apr. 1891, MSS 363/4X: "I have had a very hard time since you left. On Friday we went to the Hawkesbury. There was too much swell on outside for work. We did not get into smooth water till lunch time, and then we . . . anchored in a most lovely place called Refuge Bay."
29. Diary 1891; La Nauze, *Making the Constitution*, pp. 61-63; Griffith’s wife and daughter (Eveline) left the next day, 26 Mar., for Brisbane.
31. SWG to JG, 2 Apr. 1891, MSS 363/4X.
32. SWG diary 1891; SWG to JG, 2 Apr. 1891, MSS 363/4X; La Nauze, *Making the Constitution, p. 78*; "He knew what the Bill was about, in general and in detail, it was his Bill’’
34. Ibid., p. 550; diary 1891.
36. Ibid., 1891, p. 598 (vote); p. 591 (U.S. Senate); p. 575 (Griffith-Deakin exchange); p. 574 (Baker’s amendment).
37. Ibid., pp. 612-39 [voters for house of representatives]; pp. 639-40 [candidates for house]; pp. 643-52 [minutes for election].
38. Ibid., p. 703 [British India]; p. 689 [keep out]; pp. 688-89 [Kingston].
39. Ibid., p. 755 [vote]; p. 714 [state-rights-party].
40. Ibid., pp. 756 [several days' debate]; p. 757 [compromise].
41. Ibid., pp. 767-76 [debate on Wrixon's amendment]; p. 776 [Queen's]; p. 772 ['surrender' and 'all the prerogatives']; p. 771 [extraordinary words]; p. 770 [the power is vested].
42. Ibid., pp. 779-85 [Judicature debate]; p. 781 [interference]; p. 783 [suppose].
43. Ibid., pp. 788-830 [finance and trade debate]; p. 807 [all knowledge].
44. Ibid., pp. 849-64 [states]; pp. 850-51 [one voice].
45. Ibid., p. 905 [best constitution]; p. 907 [national urgency]; diary 1891.
47. Ibid., p. 932.
48. 'The end is assured. It may even come before the close of 1892', H. Parkes to SWG; 11 Apr. 1891, MSQ 188, pp. 11-13; Reid agreed to repudiate publicly this charge against Griffith, 'I believe you perfectly incapable of any design which you considered treacherous', G. H. Reid to SWG, 12 and 26 May 1891, MSQ 188, pp. 49-51, 57-60; draft replies SWG to Reid, 6 and 19 May [cited] 1891, MSQ 188, pp. 45-47, 53-55.
49. La Nauze, Making the Constitution, pp. 87-90; see P. Fysh to SWG 13 May 1891, describing a disappointing visit by Parkes to Hobart; see A. Deakin to SWG; 16 July 1891, on federal capital; see SWG to JLM, 'Sir H. Parkes appears to be at the mercy of the Labour Party. He has not yet brought forward the Federation question, and until he does it is of no interest to us, so that my hands are tied', 11 Oct. 1891, Field-Musgrave papers.
52. SWG to JLM, 20 Nov. 1892. Field-Musgrave papers.
55. SWG to JLM, 20 Aug. 1896, Field-Musgrave papers.
59. J. Symon to SWG, 1 Apr. 1897, La Nauze, Making the Constitution, pp. 130-131; SWG to J. T. Walker, 2 Apr. 1897, Symon papers, MS1736, National Library; E. Barton to SWG, 4 Apr. 1897, MSQ 189, pp. 287-94; J. Downer to SWG, 29 Apr. 1897, MSQ 189, pp. 309-11.
60. 'The Draft Federal Constitution Framed by the Adelaide Convention of 1897'. Review of Reviews, 20 July 1897, 16, pp. 56-61, Mitchell Library, 059/R.
61. La Nauze, Making the Constitution, p. 191; see also pp. 168-170; J. Symon to W. McMillan, 7 July 1897, MSS 1885, Item 4, McMillan papers Mitchell Library, cited La Nauze, note 17, p. 344.
62. La Nauze, Making the Constitution, pp. 169-70.
63. H. Dobson to SWG, 23 Dec. 1897, MSQ 189, pp. 385-90; see R. C. Baker to SWG, 28 Jan. 1898, MSQ 189, pp. 417-20 [bewailing slow progress and provincial jealousies] and A. Deakin to SWG, 20 Jan. 1898, MSQ 189, pp. 421-24 [regretting Griffith's absence and wondering about Reid's influence]; for rumours and about Griffith being invited, see J. Downer to SWG, 25 May 1897 "it is good news that we are likely to see you at the adjourned meeting", MSQ 189, pp. 317-20; R. N. Jodnell [a Kalgoorlie solicitor] to SWG, 11 July 1897, was even more specific "I read in your letter that you had been asked to go to the Convention" MSQ 189, pp. 339-44; Jodnell had hoped that Griffith would
refuse, which may have swayed his decision. See R. C. Baker to SWG, 24 July 1897, "I exceedingly regret that you probably will not be present", MSQ 189, pp. 345-47; see J. H. Symon’s claim to have regretted his absence from Melbourne, 18 Mar. 1898, MSQ 189, pp. 441-44; La Nauze, Making the Constitution, pp. 177-95 (Sydney meeting); pp. 203-23 (Melbourne session).

64. J. P. Boucaut to SWG, 8 Apr. 1898 (no chance) and 17 Dec. 1897, MSQ 189, pp. 449-52, 377-80; Sir Samuel Way, Sir John Madden and Sir Frederick Darley were colonial chief justices; SWG corresponded with Way, see letter to SWG, 6 Jan. 1898, "It does not look as if Federation is going to be accomplished this time", MSQ 189, pp. 395-97.

65. La Nauze, Making the Constitution, pp. 239-41; SWG diary for details illness (piles); James Farrell, Hon. Sec., Queensland Federation League to SWG 22 Dec. 1898, MSQ 189, pp. 683-84.

66. La Nauze seems unaware of Griffith’s presence in Melbourne; La Nauze, Making the Constitution, pp. 241-47; J. R. Dickson replaced Byrnes (who died) as Queensland’s premier on 1 Oct. 1898.

67. Copy of paper as presented to Queensland parliament, C.A.40, 1899, C 342, 901/G, Mitchell Library; he remained uncertain about how Queenslanders would vote, believing that federation oppositions were using "personal abuse and falsehood", notably the Brisbane Telegraph. SWG to JLM, 29 June 1899, Field-Musgrave papers.


69. SWG to S. of S., 19 Oct. 1899, C.O. 234/69, 32940; R. Philp became premier on 7 Dec. 1899 (after the 7-day Labor ministry).

70. See Colonial Office minutes [R. G. W. Herbert, J. Anderson and J. Chamberlain on 32940; copy telegram sent 3.40 p.m. 11 Dec. on same.

71. SWG to S. of S. telegram, 14 Dec. 1899, C.O. 234/69, 34844, with minutes of Col Off, the telegram was sent on 22 Dec.

72. A. Bruce to SWG, 4 and 6 Nov. and 14 Dec. 1899, MSQ 189, pp. 829-36, 841-44; SWG to S. of S., 16 Dec. 1899, C.O. 234/69, 2450, enclosing advance copy of article, "Preliminaries of the Federation".

73. SWG to S. of S., 2 Feb. 1900, C.O. 234/70, 3744; for correspondence between SWG and Forrest in Dec. 1899, see MSQ 189, 793-6, 837-40; SWG diary, 1900, records meeting Forrest on 11 Jan. 1900 at "Harlaxton", the governor’s residence at Toowoomba, and in Brisbane on 15 Jan.

74. J. R. Dickson to SWG, 21 Feb. 1900, MSQ 189, pp. 921-26; SWG diary, 4 Feb. 1900, "went by train to Toowoomba with Dickson [starting for London]."

75. J. Forrest to SWG, 8 Mar. 1900, MSQ 189, pp. 947-50; G. H. Reid to SWG, 3 Mar. 1900, MSQ 189, pp. 951-54; La Nauze, Making the Constitution, pp. 170-76.

76. Telegrams, MSQ 189, pp. 965-74; SWG to S. of S., 9 Apr. 1900, [reply to 5 Apr.], C.O. 234/70, 11256.

77. J. Boucaut to SWG, 3 Feb. 1899, MSQ 189, pp. 701-06.

78. Ibid., 21 July and 5 Sept. 1899, MSQ 189, pp. 751-55 and 761-64.

79. F. W. Darley to SWG, 8 Jan. 1900, MSQ 189, pp. 853-60.

80. SWG to S. Ward, 21 Apr. 1900, Way papers, PRG 30/4, South Australian Archives; S. Way to SWG, 6 Apr. and 19 May 1900, MSQ 189, pp. 981-92, 1013-16, 1031-34; J. Boucaut to SWG, 13 Apr. and 31 May 1900, MSQ 189, pp. 1003-1006, 1055-62.


84. Ibid.; Lamington to S. of S., 27 Apr. 1900, C.O. 234/70, 13045.

85. Lamington to S. of S., 2 May 1900, C.O. 234/70, 13601; the Chief Justice of Victoria did not want his name published, but was willing to give his view if requested by the Colonial Office.

86. J. Forrest to SWG, 4 May 1900, MSQ 189, p. 1023.

87. Barton’s version in J. R. Dickson to J. Chamberlain, 15 June 1900, his draft clause also allowed for the Queen by exercise of the royal prerogative to grant special leave to appeal, C.O. 234/71, 19054.

88. J. Dickson to SWG, 21 May 1900; MSQ 189, pp. 1051-53; Lamington to S. of S., 21 and 22 May 1900, C.O. 234/70, 15847, 15988.

89. Draft memorandum, 26 May 1900, MSQ 189, pp. 1035-48; SWG to Lamington. 26 May 1900, in Lamington to S. of S., 31 May 1900, C.O. 234/70, 17183.
90. SWG to S. Way, 28 May 1900, Way papers, PRG 30/4, pp. 129-32; these papers include copies of the bulk of Way’s correspondence in this campaign.

91. B. R. Wise to SWG, 11 June 1900, MSQ 189, pp. 1085-88; Wise was sure the constitution was a political as well as a legal document; this, a logical verdict, which if accepted undermines the defence by Way’s biographer, A. J. Hannan: the issue was ‘not one of politics at all, but of constitutional law’, The Life of Chief Justice Way, p. 185; La Nauze also comments that ‘in appropriate contexts a judge should declare his interest’, Making the Constitution, p. 249.

92. SWG draft see Lamington, telegram, 14 June 1900 to S. of S., CO, 23/4/70, 18911.

93. See constitution, section 74: Chamberlain recorded his gratitude in the House of Commons, and directed thanks to Dickson. La Nauze, Making the Constitution, pp. 267, 262; he thanked Griffith in a private letter of 31 Dec. 1900 for his ‘advice and suggestions while the Bill was under consideration here’, MSQ 190, pp. 101-104.

94. SWG to S. Way, 18 (quite relieved) and 23 (public apology) June 1900, Way papers, PRG 30/4, pp. 145-46, 156-57.


96. SWG to A. I. Clark, 9 Aug. 1900, Clark Papers, Tasmanian University Archives, C4/3.13 (G-AIC); La Nauze concludes Griffith’s (‘that strange man’) part was ‘distinctly equivocal, though in the end he did act as a judge and a legal scholar rather than as an interested advocate’, Making the Constitution, p. 267.

97. SWG diary 1900-1901; see chap. 10 for SWG’s offers from potential federal ministers; the opponents of the chief justices, notably Symon, had argued in 1900 that Griffith and others desired appointments to the Privy Council.

Chapter 9. A Peaceful Decade

1. SWG diary 1893: he sent photographs to friends and relatives for example to Jeanie Lucinda Musgrave on his ‘way back from the opening of Parliament’, SWG to JLM, 20 Aug. 1896, Field-Musgrave papers; sometimes he was asked for likenesses: ‘Don’t forget a photo of yourself in your state robes, will you. I should be so proud of it’, a cousin A. C. Griffith to SWG, 25 June 1900, MSS 363/2X, pp. 142-45; speculation is needed to interpret his actions, signs of vanity, pride or inadequacy; ‘Steele Rudd’ [A. H. Davis] a Supreme Court official described Griffith’s ‘dignity and decorum’ at his inauguration, Brisbane Courier, 8 Aug. 1931.

2. SWG to JLM, 21 Mar. 1893: the most political cases he heard were those uncovering the corruptness of the Queensland National Bank, which continued from Lilley’s hearings; there is no suggestion that he acted other than objectively despite his previous close involvement with many of the parties; he recorded in his judge’s notebook before hearing Queensland Investment Land Mortgage Company v. Hart and others (6 QLJ, 186) on 30 Aug. 1894 that ‘both parties desire that I should hear the case notwithstanding that I was counsel for the Pls in the matter in dispute’, SCT/AL3, p. 37; in R. v. Hart (9 QLJ, 95) he rejected his brother’s expert witness; his own views were clear: ‘the Q.N. Bank business is very serious. I do not know what the end of it will be. The present directors are quite discredited’, SWG to JLM, 11 Feb. 1897.


4. SWG diary 1894: SWG to JLM, 23 Feb. 1894 (on Eveline and Llewellyn); Griffith revealed disappointment in his son: ‘I believe he has considerable mechanical ability, but he has never done much in literature”; he listed T. H. Brown’s job (as partner in D. H. Brown and Co.) before mentioning the “wooing” of his daughter.

5. SWG to JLM, 23 Feb. 1894; he encouraged better reporting of cases, chairing the Council of Law Reporting which began reporting Brisbane cases in 1902 Queensland State Reports (QSR) replacing the Queensland Law Journal (QLJ); this council appreciated Griffith’s meticulousness, his ‘prompt consideration and unfailing attention’ to details, QSR, 1903, p. ix; Steele Rudd, then under-sheriff, described how Griffith’s ‘small hand with gold rings flashing on the fingers would travel over the pages of a huge note book with
machine-like rapidity . . . But such writing! It looked like a lot of horizontal bars”, Brisbane Courier, 8 Aug, 1931.

6. SWG diaries 1896–1903; Act 62, Vic. No. 9; he sent copies to acquaintances, who realised the extent of his work; Deakin wrote: “how you find leisure for such a feat while discharging the onerous duties of your office, is more than I can conceive”, 20 Jan. 1898, MSQ 189, pp. 421–24; R. C. Baker wrote: “it must have taken you an inordinate amount of time and thought . . . the adoption by all the colonies is only a question of time”, 28 Jan. 1898, MSQ 189, pp. 417–20; when Griffith spoke on 12 Jan. 1898 at the Australasian Association for the Advancement of Science on ”Criminal Responsibility: a Chapter from a Criminal Code”, he deplored the reluctance of the legal profession to express laws scientifically, but concluded that legal rules “afford an excellent illustration of the old saying that the common law is the embodiment of common sense”; the code is still in use in Queensland, and was copied in other states; a later Queensland judge, A. J. Mansfield, describes it as: “the product of . . . [a] great jurist”, see R. F. Carter, Criminal Law of Queensland, p. v.

7. See SWG diaries 1894–95 and 1902 for details; he derived satisfaction from such painstaking detailed work, which was, in Deakin’s words, “leisure” for him.

8. Graham, Life, pp. 59–60; he also recounts Griffith’s insistence on a clock being accurate; on 1 Mar. 1895 Griffith fined a sheriff’s bailiff £10 for contempt of court because the jury was not present at 10 a.m., Gregory v. McCafferty, SCT/AL, 126; speculation is needed to interpret whether this and his punctuality were merely signs of politeness and necessary orderliness or indications of neurotic perfectionism, K. Horney, Neurosis, p. 196; details of cases from QLJ and QSR reports, and his Judge’s notebooks, SCT/AL, vols. 1–129, QSA.


10. Tooronga Spa Water Company v. Campbell, 10 QLJ, 1, cited pp. 8–9; Steele Rudd paid Griffith a high compliment: “to persons bred and born of the bush his knowledge of the methods and guile of horsemen and cattlemen was a matter of wonder”, Brisbane Courier, 8 Aug. 1931.


12. Levy, formerly called Wardmassay v. Wardmassay, SWG, 30 Apr. 1903, note in Judge’s notebook, SCT/AL 95–96, pp. 117–200, 1–79; his son Percival (E.P.T.) acted as his associate from 30 May 1900 to 28 July 1903.


14. Browne v. Cowley, 6 QLJ, 234, cited pp. 236, 240–41. The words of this judgment were included in his notebook, see also for evidence SCT/AL 3, pp. 177 ff and 4, pp. 1–47.

15. In re Cambooya Electorate Petition [Daniels v. Mackintosh], 9 QLJ, 341.


17. SWG to JLM, 23 Feb. 1894, Field-Musgrave papers; he went on to speak of their amiable social relationship, despite Harding’s eccentricity and confused relationship, his third daughter married the father of his fourth daughter’s husband; see Johnston, Queensland Bar, pp. 49-50 (Chubb), p. 73 (Power).

18. Quarrell’s appeal, 8 QLJ, 121; Griffith’s decision was on 8 Sept. 1897, appeal on 10–11
398 Notes to pages 228-43

Nov. 1897; see SCT/AL 93-4, pp. 168 ff and 1-15; Griffith had accepted the arguments of the barrister, W. F. Wilson. Johnston, Queensland Bar, pp. 117-18.

24. Johnston, Queensland Bar, pp. 65-69 (Cooper); pp. 70-73 (Real). Nov. 1897; see SCT/AL 93-4, pp. 168 ff and 1-15; Griffith had accepted the arguments of the barrister, W. F. Wilson, Johnston, Queensland Bar, pp. 117-18.

25. *R. v. Kenniff*, 1903 QSR, 17, see SCT/AL 61-62 and 78 for SWG's notes; diary 1902; E. G. Heap, "The Ranges were the Best: the Kenniff story", *Queensland Heritage*, 2, 1-15; cited at QSR, pp. 20-21 [horse and charcoal]; Heap, p. 14 [James; statement]; Henry, p. 15 [8 o'clock], [Griffith's tones] Heap, p. 16 (verdict, citing Brisbane Courier); Heap, p. 18 [clash Real, jury, citing SCT/CM 6, p. 173]; QSR, p. 28 [Cooper on jury]; QLS, pp. 40-41 [Real on jury]; QSR, p. 44 [SWG on jury]; Heap, p. 18 [Real on Cooper, citing typescript by T. O'Sullivan], QSR., p. 40 [Real on James]; p. 41-42 [SWG on James]; Steele Rudd remembers Griffith's death sentence as the only time he showed emotion: "he shook so that the rug covering his knees failed to hide the tremor", Brisbane Courier. 8 Aug, 1931.


32. In re Tyson; R. v. *Queensland Trustees Ltd.*, 10 QLJ, 151, long citations at pp. 154, 157 and 166, SCT/AL, 98-102; see Z. Denholm, "James Tyson"; for the importance of this amount to Queensland's finances see G. Bolton, "Robert Philip" in *Queensland Portraits*, ed. Murphy and Joyce, p. 209.


34. Hornbrook v. Hyne, 8 QLJ, 17, cited p. 19; the judgment was delivered on 9 June 1897.

35. Australian Gold Recovery Co. v. Day Dawn P.C. Gold Mining Co. Ltd., No, 2, 1902 QSR, 123; cited p. 147; Griffith's judgment (26 pages) answered technical objections to the originality and novelty of the patent.


37. Permanent Building and Investment Association v. *Hudson*, 7 QLJ, 23, cited p. 24; he was speaking on 21 May 1896.

38. *Alfred Shaw and Company Ltd v. Drake and Stubbs*, 8 QLJ, 12, 49 Vic No. 4.


42. In re Weeden 9 QLJ, 91, cited p. 92.

43. In re a Solicitor, 1902 QSR, 9; see Section 393, of 62 Vic, No. 9.

44. In re S. H. Walker, 8 QLJ, 61; decision of 3 Aug. 1897.


46. Ex parte T. J. Ryan, No. 2, 10 QLJ, 45, cited p. 46; see D. J. Murphy, T. J. Ryan, p. 197.

47. Griffith's circuit cases are collected in 21 volumes, SCT/AL 110-129; see diaries for details of travel; for Normanton cases, SCT/AL 119 and part 129.

48. For Cooktown cases, SCT/AL 112-113 and part 129; he took Julia and Eveline north in 1894, they visited Cairns and Barron Falls, see SWG to JLM, 27 June 1894, Field-Musgrave papers, and diary 1894; for report *R. v. Mackie* SCT/G2, pp. 254 ff.


50. For 1897 and 1899 Rockhampton cases, SCT/AL 121-122.

51. For Maryborough cases, SCT/AL 116-117.

52. For Bundaberg cases, SCT/AL 110-111.

53. For Roma cases, SCT/AL 123-124.
54. For Toowoomba cases, SCT/AL 125-128; quotation from the case of R. v. Brunnock, statements by James Macnamara and Dr T. W. Gardi.

55. For Ipswich cases, SCT/AL 114-115.

56. Details from Sydney University archives (Series G2/135) show that after matriculating in March 1895, he was enrolled in Arts from 1895-99; in 1895 he passed four, and failed three, subjects; in the March 1896 deferred examinations he passed two, but failed one; in 1896 he repeated first year, failing in all four subjects, but passed all in the March 1897 deferred examinations; in 1897; in second year he passed one, and failed three, subjects, passing only one of these in the March 1898 deferred examinations; in 1898 he repeated second year, passing one, and failing three subjects — of which he passed only one in the March 1899 deferred examinations, he was enrolled again in 1899 but did not sit for the annual examinations; he became his father’s associate in May 1900; significantly Griffith does not mention Percy to Lucinda Musgrave.

57. His eldest son Llewellyn had been in England from 1894 to 1896 when he came to Port Douglas to erect a sugar mill; he stayed with his parents from 3 July to 1 Aug. 1896; he returned to “Merthyr” on 28 Oct. 1897 and left for England on 14 Jan. 1898; for 1902 visit to Sydney see chap. 10 note 110, below; details from diaries and 29 letters from Llewellyn, MSS 363/2X, pp. 265-401.

58. For social life at “Merthyr” see diaries which also give details of his experimentation with bicycling and golf.

59. SWG, Two Stories from Dante; see MSS 363/10X; he dedicated this to MacGregor, who thanked and encouraged him: “I hope you will not rest on your laurels, but continue until you have done the whole Divina Commedia”, 27 Dec. 1898, MSQ 189, pp. 579-82; speculation is inevitable to explain why he turned after becoming a judge, imposing earthly punishments, to translating Dante’s visions of punishments after death; was it to express the emotionalism hidden by his cold exterior or because he had more spare time than in his political-legal career, or hopes for literary fame or money?; only speculation can reveal why he began with these two stories Cantos 5 and 33: Francesca, who fell in love with her husband’s brother, was put to death with her lover; Ugolino, imprisoned in a tower with his two sons and two of his grandsons, starved to death despite eating the corpses of his offspring; obviously the work was important to him — he sent copies to over 30 acquaintances whose replies are retained in MSQ 189; John Downer is cited, 2 Dec. 1898, MSQ 189, pp. 609-12; he kept copies of a review from Rome (in Fanfulla Della Domenica, 30 Apr. 1899); most critics, including myself, find the translations stilted because of his insistence on too literally following the Italian; see Clifford L. Pannam, “Dante and the Chief Justice”, Australian Law Journal, 33, 23 December 1859, pp. 290-4; Griffith did this consciously: “I have not had time to read much more of Dante lately but I occasionally translate a little into the hendecasyllabic metre of the original which, also, to me suggests the spirit of the Italian” (to JLM, 29 June 1899); most critics, including myself, find the translations stilted because of his insistence on too literally following the Italian; see Clifford L. Pannam, “Dante and the Chief Justice”, Australian Law Journal, 33, 23 December 1859, pp. 290-4; Griffith did this consciously: “I have not had time to read much more of Dante lately but I occasionally translate a little into the hendecasyllabic metre of the original which, also, to me suggests the spirit of the Italian” (to JLM, 29 June 1899); and he criticised other translations including that of Longfellow: “I am vain enough to prefer my own” (to JLM, 6 Oct. 1899); see chap. 11 note 79, below, for his later translations of the whole of the Divine Comedy.

60. His exact financial position remains concealed; he certainly lived well on his judge’s salary, but was continually worried by the “Merthyr” mortgage; significantly when Judge Harding died in 1895 he was worried by the debt (£20,000) remaining on his property, SWG to JLM, 31 Oct. 1895.

61. As before, the place of Freemasonry in his life is hard to estimate; his diary, 6 July 1896, records this consecration at the Kangaroo Point Lodge; on 8 July he went to the installations at Hiram Lodge; in Oct. 1897 he records resigning the office of provincial grandmaster in the Irish Constitution; in Apr. 1898 he installed G. S. Hutton into this office.

62. As president, Griffith delivered three inaugural addresses for the University Extension System: “The Principles of Social Science” [18 Aug. 1893]; “A Council of Education — the Appreciation of Gold” [23 May 1895]; and “Some Conditions of Australian Federation” [11 June 1896]; he regularly attended other meetings; the System was begun to promote higher learning, and to facilitate the establishment of a university; he supported bills to incorporate and endow a university which were initiated, for instance, in 1899, EDU/VAR, QSA.

63. Brisbane Girls’ Grammar School. Archives, especially Minutes of Trustees, 21 July 1882-29 Jan. 1904. Griffith was sure his judgment was correct, despite pupil and public outcry, and the successful subsequent careers of those sacked; Maud Sellers published
historical works and became in 1908 a Research Fellow of Newnham College, Cambridge, see Register of the College.


66. Diary, 23 July 1898; Lamington to S. of S., 23, 27 July and 13 Aug. 1898, C.O. 234/67, 19527, 16822 and 21185; Lamington to SWG, 22 Sept. 1898, MSQ 189, pp. 527–28; Garrick after an interview at the Colonial Office told Griffith he had taken “the opportunity of mentioning the facts as stated by you not of course bringing in any way the name of Lady Lamington”, Garrick to SWG, 5 Oct. 1898, MSQ 189, pp. 523–26, Griffith records seeing Lady Lamington (e.g., 18 May) and was to communicate with both her and her husband until 1913.


68. Lamington was annoyed because of Griffith’s action on 23 May in assuming the administration; he blamed Griffith for using influence over the premier, his protege: “Byrnes and Griffith are so ambitious and intriguing . . . [Griffith] deceived me . . . I have kept on good terms with him, though I do not now believe in him”, Lamington, private letter to “Willie” [Selborne?], 12 June 1898, C.O. 234/67, 17011; the Colonial Office was critical: Griffith had made “an absurd fuss about nothing” (E. H. Mercer, 26 Jan. on 1382); Griffith was “an able man but after this melancholy exhibition no one will have much confidence in his temper or judgement” (J. Anderson, 27 Jan. on 1382); Griffith’s “conduct was inexcusable” (E. Wingfield, 27 Jan. on 1382); see J. F. Garrick to SWG, 10 Feb. 1899, MSQ 189, pp. 707–710, discussing Griffith’s interpretation; prestige was always important to Griffith, as an earlier postscript in a letter to Lucinda Musgrave suggests “You do not congratulate me on getting the Grand Cross of M. and G.”, 31 Oct. 1895, Field-Musgrave papers.

69. Griffith was formally appointed as lieutenant-governor after Lamington’s despatch of 10 July 1899, C.O. 234/68, 22261; Hopetoun to Barton, 12 Sept. [friends] and 3 Dec. 1901, Barton papers, 51/423 and 450, National Library.

70. W. MacGregor to SWG, 16 Feb. 1894, MSQ 188, pp. 809–812; see Joyce, MacGregor, pp. 105–119.


74. SWG to E. Barton, private, 6 July 1901, Barton papers, 51/411, National Library; Hopetoun to E. Barton, 16 Aug. and 11 Oct. 1901, Barton papers, 51/420 and 425.

75. SWG to A. Deakin, 4 Dec. 1901, Deakin papers, 1540/2157, National Library.

76. SWG to Mr Lyons, 9 Feb. 1903, in Barton papers, 51/577; SWG to E. Barton, 12 Feb. 1903, Barton papers, 51/578.

77. SWG to JG, 10 Oct. 1898, MSS 363/4X; Julia’s health was never good, she was asthmatic; on 18 Dec. 1895 she had been operated on for nasal polypi, his political-legal friend Sir Arthur Rutledge was in 1898 not in parliament; his sister Alice had married H. B. Oxley in 1874, on 28 Nov. 1894 Tom Brown (who had been in England) married Eveline in St John’s Anglican Cathedral, rather than a Congregational church; Griffith had been mainly attending Anglican churches after his father died; SWG’s diary entry for the wedding recorded; “about 150 guests at lunch (Gov. and Lady Norman) [112 seats in Hall]”; they were in England from 5 Dec. 1894 to 2 Jan. 1897; their daughter, Jemima Jean Hunter, Griffith’s first grandchild, was born on 29 June 1898.

78. Diary 1898; the strain of this illness must have contributed to his clash with Lamington, see above and notes 66–68.

79. Priscilla was 40; Evelyn Douglas Griffith Brown was born on 20 April; Llewellyn had not complained of poor health in England; he had an operation on his gums in San Francisco on his way home through the United States, which his dentist attributed to earlier poor
Notes to pages 251-59  401

dental work, L. Griffith to SWG, 25 May 1900, MSS 363/2X, pp. 398-401; Dr. Kebbell, attempting a diagnosis from information given by his father, believed this illness must have weakened Llewellyn: he believed septic poisoning from ulcers in the intestines had led to meningitis and periositis, and finally caused heart paralysis; Griffith had told him that his heart sounds "were always abnormal". Letter to SWG, 14 Jan. 1902, MSQ 190, pp. 711-19.

80. Diary 1902 and letters SWG to JG, 13, 14, 18, 21, 25, 29 Jan.; 1, 4, 7, 10, 12, 15, 18, 21, 24[2], 25, 28 Feb.; 3, 5, 7, 10 Mar. 1902, MSS 363/4X.


Chapter 10. Beginning the High Court

1. A. Deakin to SWG, 7 Oct. 1900, MSQ 190, pp. 53-56; SWG to A. Deakin, 11 Oct. 1900, Deakin papers, 1540/2143, National Library.
3. SWG to A. Deakin, 19 Oct. 1900, Deakin papers, 1540/2146.
5. E. Barton to A. Deakin, 5 Nov. 1900, Deakin papers, 1540/435.
6. A. Deakin to E. Barton, 14 November 1900. Barton papers, 51/363; A. Deakin to SWG, 14 Nov. 1900, MSQ 190, pp. 81-84.
7. SWG to A. Deakin, 24 Nov. 1900, Deakin papers, 1540/2147.
9. Diary 1900; see chap. 8, above; La Nauze, Alfred Deakin, vol. 1, pp. 207-10; Hume Cook in 1926 remembered being annoyed that Griffith "wanted to parley"; letter to H. Brookes, 16 Feb. 1926, Hume Cook papers, MS 601, National Library
10. SWG to A. I. Clark, 16 Jan. 1901, Clark papers, Tasmanian University Archives, C4/3 [G,AIC]; they were in correspondence, see G. H. Reid to SWG, 20 Oct. 1900, MSQ 190, pp. 69-70.
12. SWG to A. Deakin, 15 Jan. 1901, Deakin papers, 1540/2149; SWG diary, 1901.
14. Hopetoun to SWG, 12 May 1901, MSQ 190, pp. 289-94; Griffith was flattered when he became a privy councillor on 1 Jan. 1901, see J. Chamberlain to SWG, 31 Dec. 1900, MSQ 190, pp. 101-104.
17. R. C. Baker to SWG (hoping for Griffith's appointment), 2 May 1901, MSQ 190, pp. 301-04; J. Boucaut to SWG [all mentioned], 15 Aug. 1901, MSQ 190, pp. 357-60; Lamington to SWG [Barton and Griffith], 12 Sept. 1901, MSQ 190, pp. 433-37.
19. SWG to A. Deakin, 15 Aug. 1903, Deakin papers, 1540/2165.
21. SWG to A. Deakin, 22 Aug. 1903, Deakin papers, 1540/2166.
24. La Nauze, Alfred Deakin, note 2, p. 345, [to Deakin and "improper"] and p. 307, [citing Tennyson's diary, 30 Aug. 1903].
26. E. Barton to SWG, 19 Sept. 1903, MSQ 190, p. 1159.
27. Ibid., 21 Sept. 1903, MSQ 190, p. 1161.
28. E. Barton to A. Deakin, 27 Sept. 1903, Deakin papers, 1540/468; Griffith kept all his telegrams (75) and letters (120) of congratulations, MSQ 190, pp. 1177–1713 and MSQ 191, pp. 1–56.
29. S. Way to Sir Frederick Darley, 14 July 1903, Way papers, PRG/30/5/7, p. 168; he repeated the same sentiments to the Rev. F. W. Bourne on 18 Nov. 1903, PRG/30/5/7, p. 24 and to Sir Fowell Buxton, PRG/30/5/7, p. 81.
30. Griffith had told Lucinda Musgrave in 1901 that "Barton is a very able man, but indolent; and eats and drinks too much, and I doubt whether he will rise to the occasion", 25 Jan. 1901, Field-Musgrave papers; a Sydney legal friend, C. E. R. Murray, urged Griffith to "put Toby [Barton] under the whip ... there is no doubt about him being all there when he does pull", 26 Sept. 1903, MSQ 190, pp. 153–54; J. Boucaut noted his "daily pleasure ... at seeing you [Griffith] there — noting the suppressed fury of a certain other gentleman [Symon]", 18 Nov. 1903, MSQ 190, pp. 1555–58; R. E. O' Connor to SWG, 24 June 1906, MSS 363/5X, pp. 28–31; see chap. 11, below, for E. Barton's 1913 letters to SWG, MSQ 191, pp. 863–91.
31. See District Registrar to Secretary Public Service Tender Board, Sydney, 18 Feb. 1904; and District Registrar, Sydney to Principal Registrar, Melbourne, 7 Mar. 1904 [funds are available]; 15 Apr. 1904 [to ask Treasury] and 31 Mar. 1904 [typewriter]. Letter Books of the High Court from 1903, held at High Court Darlinghurst, Sydney; E. P. T. [Percy] Griffith had continued as Associate to SWG from Queensland.
33. Return, 4 Nov. 1904; District Registrar, Sydney, to Principal Registrar, 28 Feb. 1905, Letter Book of the High Court.
34. SWG, Chief Justice, to G. H. Reid, Prime Minister, 12 Nov. 1904, Symon papers, Box 53, 1736/11/146, National Library.
35. G. H. Reid, Prime Minister, to J. H. Symon, 16 Nov. 1904, idem., 147.
43. SWG to A. Deakin, 20 Feb. [has written to Reid warning of a "grave scandal"], 18 Mar., 23 June 1905, Deakin papers, 1540/2160, 2150, 2168; E. Barton to A. Deakin, 11 Jan., 16 and 25 Feb., 21 June 1905, 1540/480, 482, 483, 485; R. E. O'Connor to A. Deakin, 21 Feb., 8, 12, 13, 14, 19, 20, 21, 23 June 1905, 1540/4092, 4093, 4099, 4101, 4103, 4105, 4107, 4108, 4111.
45. SWG, E. Barton and R. E. O'Connor to A. Deakin, 21 Feb., 8, 12, 13, 14, 19, 20, 21, 23 June 1905, Deakin papers, 1540/4092, 4093, 4099, 4101, 4103, 4105, 4107, 4108, 4111.
49. Griffith went further than when he had adjourned the Queensland Supreme Court on 26 Oct. 1898.
50. File on question, Symon papers, pp. 356–57; the second telegram [according to E. P. T. Griffith] was sent at 12.20 p.m. and received 12.58 p.m.
52. Notes, pp. 387 b–r; Cabinet 6 May, p. 378 and G. H. Reid to SWG, 7 May referred to in subsequent letters, see note 54.
53. Statement from the Bench on 23 May; SWG to J. H. Symon, 4 May; Castles to J. H. Symon, 15 May; J. H. Symon to SWG, 15 and 17 May; SWG to G. H. Reid, 22 May 1905; G. H. Reid to SWG, 22 May 1905, referred to in subsequent letters, Symon papers, see note 54.
53. J. Forrest to A. Deakin, 1 June 1905, Deakin papers, 1340/1710.
57. A. Inglis Clark to SWG, 4 Nov. 1904, MSQ 191, pp. 167-70.
59. Federated Amalgamated Government Railway and Tramway Service Association v. N.S.W. Railway Traffic Employees Association [Railway Servants’ case], 1906, 4 CLR, 488.
63. R. E. O’Connor to A. Deakin, 14 Jan. 1907, Deakin papers, 1540/4117.
64. A. Deakin to SWG, 16 Jan. 1907, MSQ 191, pp. 299-302.
65. Baxter v. Commissioner of Taxation, 1907, 4(2) CLR, 1087, cited at pp. 1102-3, 1107 (Griffith had been intimately involved in the 1885 issue, see chap. 4 note 2, above), 1108, 1109, 1110, 1111, 1114-5, 1117, 118, 1122-3 (Marshall); 1126 (King) and 1130 (plain intention).
66. Isaac Isaacs to A. Deakin, 28 Sept. 1903, Deakin papers, 1540/2599.
68. Baxter’s case, 5 CLR, 398 (Privy Council); G. Sawyer, Australian Federalism in the Courts, p. 129.
74. Based on an analysis of reported cases between 1903-1920, these totalled 954.
75. Bond v. the Commonwealth of Australia, 1903, 1 CLR, 13, cited p. 23.
76. Miller v. the Commonwealth, 1904, 1 CLR, 668.
77. Cousins v. the Commonwealth 1906, 3 CLR, 529, cited p. 539.
83. Williamson v. Petersen, 1904, 2 CLR, 1, cited pp. 16, 21, 23.
84. See McLaughlin v. Daily Telegraph Newspaper and Vale of Clwydd Coal Mining Co. Ltd., 1904, 1 CLR, 143, 243; 1904, 1 CLR, 479, Privy Council.
87. McLaughlin v. Freehill, 1908, 5 CLR, 858.
88. This and the following case go beyond the period covered by this chapter, but are closely linked by subject; City Bank of Sydney v. McLaughlin, 1909, 9 CLR, 615, cited p. 626.
Chapter 11. The Established High Court

2. R. v. Barger, 1908, 6 CLR, 41, cited p. 64.
3. Higgins to A. Deakin, 12 July 1908, Deakin Papers, 1540/2432; earlier Higgins had told Deakin that his being entrusted with legislative work was his excuse for noticing newspaper comments, "only in communication with the head of the government", 22 Nov. 1907, 1540/2431.
10. Chaplin v. Commissioner of Taxes for South Australia, 1911, 12 CLR, 375, cited pp. 378 (see 4 Wheat, 316), 381.
12. C. Powers to R. R. Garran, telegrams 3-17 September 1912, Attorney-General’s Correspondence Files, CRS A432, 29/2755, Part 2, Australian Archives, includes copies of shorthand notes throughout proceedings.
15. C. Powers to R. R. Garran, 22 Oct. 1912, Attorney-General’s Correspondence Files, CRS A432, 29/2755, Part I, Australian Archives; B. R. Wise from Sydney was Griffith’s personal friend; H. E. Starke from Melbourne was to be considered for the High Court bench in 1913.
16. W. M. Hughes, at Adelaide, reported in Sydney Daily Telegraph, 21 Apr. 1911, see Attorney-General’s Correspondence Files, CRS A432, item 29/2755 Part 2, Australian Archives.
17. Colonial Sugar Refinery Company Ltd. v. Attorney-General for Commonwealth and others, 1912, 15 CLR, 182, cited at pp. 192, 193, 194, 195, 198; Dyson v. Attorney-General, 1911, 1 King’s Bench, 410; Privy Council appeal 17 CLR, 644.
19. E. Barton to "Muff" [daughter Jean] Barton, 3 June 1908, Barton papers, 51/779.
20. R. E. O’Connor to SWG, 22 Jan., 15 May and 3 Nov. 1912, MSQ 191, pp. 601-8, 635-38 and 709-12; diary 1911-12; see Griffith’s tribute to O’Connor, 25 Nov. 1912, 15 CLR, introduction. He believed their ‘minds ran to a great extent in . . . similar grooves’ apart perhaps from O’Connor’s tolerance of ‘tedious and irrelevant argument’.
21. JLM to SWG, 6 Aug. 1911, MSQ 191, pp. 613-14, reply to letter of 30 June 1911.
25. Peter Macgregor to SWG, 9 Apr. 1913. MSQ 191, pp. 751-54; ‘What a spectacle it must have been yesterday when Mr Justice Powers was sworn in!!!’ Sir Pope Alexander Cooper to SWG, 23 Dec. 1912 and 4 Mar. 1913 [cited], MSQ 191, pp. 727-29 and 747-50; L. Fitzhardinge, Hughes, p. 283 [Rich]; G. Sawer, Australian Federalism in the Courts, describes Rich as "non-political and constitutionally colourless", p. 65.
29. Sydney Daily Telegraph, 21 June 1910, newscuttings, Attorney-General's Department Correspondence, A432/2479, Australian Archives.
30. R. v. Commonwealth Court of Arbitration and Boot Trade Employes Federation, ex parte Whybrow (Bootsmakers' case) 1910, 11 CLR, 1, cited p. 29.
34. R. v. Commonwealth Court of Conciliation and Arbitration and the Merchant Service Guild of Australasia ex parte Taylor Co. and others, the Gulf Steamship Co. Ltd and others, Holyman and Sons Ltd and others (Steamships), 1912, 15 CLR, 586, cited pp. 598, 592, 593, 599, 600.
35. See note 32 for parties; Broken Hill Proprietary Co. Ltd. (case no. 2), 1912-13, 16 CLR, 245 cited pp. 257 and 259 (Lemm v. Mitchell, 1912 A.C., at p. 405).
37. SWG to E. Barton, 30 July 1913, Barton papers, 51/825.
38. W. Macgregor to SWG, 26 Feb. 1915, MSS 363/6X.
40. Cock and Howden v. Smith and others, 1909, 9 CLR, 773, cited pp. 792 [the case quoted was In re Tyler: ex parte Official Receiver, 1907, 1 King's Bench, p. 865] and 801; Smith and others v. Cock and others, 1911, 12 CLR, 11, Privy Council.
42. Bayne and another v. Blake and another, 1906 4(1), CLR, 1; see also 1907 4(1) CLR, 944 and 1908 5 CLR, 497.
43. Blake and another v. Bayne and another, May 1908, 6 CLR, 179, Privy Council.
45. Reid v. McDonald and another, 1907, 4(2) CLR, 1572.
52. E. Barton to "Muffie" [Jean] Barton, 1 Apr. 1910, Barton papers, 51/785.
64. Fraser v. Victorian Railway Commissioner, 1909, 8 CLR, 54, cited p. 58.
69. Potter v. Minahan, 1908, 7 CLR, 277, cited pp. 286, 289; see chap. 12 note 87 on outlawry.
70. Incorporated Law Institute and Meagher, 1909, 9 CLR, 655, cited pp. 673, 676-77; the conspiracy followed Meagher’s acting as solicitor in 1906 for Mr Dean who was convicted of poisoning his wife.
73. Diaries 1908-13: 18 January 1910 he estimated that his walk around the western boundary was 9 miles; this took him four hours; he recorded temperatures, for instance on 26 Jan. 1912, it was still 85° at 6.45 p.m.
74. Motion 13 July 1908; decision at meeting 10 Aug. 1908; Sydney University Senate Minutes, University of Sydney Archives, G1/1/12-13.
75. St Clair, Brisbane (Archbishop Donaldson) to SWG, 23 Sept. 1911, MSS 363/5X, and draft reply SWG to Donaldson, 30 Sept. 1911, MSS 363/5X, 47a-c; Griffith spoke at a public meeting in favour of the Victorian park site on 12 Dec. 1911 when he anticipated the university researching in mineralogy and tropical diseases, Minute Book, Brisbane City Council, IBR/1/D4.
76. Diary 1912; J. Bryce to SWG, 5 Aug. 1912, MSQ 191, pp. 655-58; Joyce, MacGregor, pp. 369-70.
77. W. MacGregor to SWG, 31 Jan., 24 May, 29 Nov. 1911, MSS 363/6X.
78. Secretary, Royal Colonial Institute to SWG, 4 Jan. 1910, MSQ 191, pp. 511-12; Griffith appears to have ended his masonic work, resigning on June 1912 from the Rose Croix Chapter, Secretary to SWG, 27 June 1912, MSQ 191, pp. 649-50.
79. On 19 Jan. 1912 Oxford University Press published his complete three parts of the Divine Comedy; his diaries (1908-12) show that his work was continuous after the first part (the Inferno) was published in 1908; in 1909 a friend sympathised “so you too have . . . troubles with that piratical thing known as ‘publisher’”, Poultney Bigelow (New York) to SWG, 19 Aug. 1909, MSQ 191, pp. 461-62; in 1911 Lucinda Musgrave hoped he could come to England to superintend publication, 6 Aug. 1911, MSQ 191, pp. 613-14; she praised the book’s appearance “so charmingly printed on its light paper”, 7 Feb. 1912, MSQ 191, pp. 617-18; Mary Lamington (who had helped persuade the press) and James Bryce were amongst those who received copies, MSQ 191, pp. 623-28, 665-68; it did not sell well and the critics were, as before, unappreciative: e.g., “unfortunately the poetry of Dante has escaped almost entirely from Sir Samuel’s industrious fingers”, see Bookfellow, 1 Mar. 1912, pp. 76-77; The English Review, Mar. 1912, p. 740; Pannam, “Dante and the Chief Justice”, pp. 290-94; for Barbara Baynton see diaries and note 84 below.
80. SWG to JG, 18 Sept. 1909, MSS 363/4X.
81. JLG to SWG, 10 Apr. 1910, MSQ 191, pp. 504-10.
82. Diaries 1908-9.
83. SWG to JG, 25 Feb. 1910, MSS 363/4X.
84. Diary, 5 July, 1911.
85. Diary 31 May 1909, typescript with corrections by Griffith in MSS 363/8X; Dudley reported refusing dissolution in telegram to S. of S., 1 June 1909, C.O. 418/70, 18413.
86. Diary, 17 July 1912, and generally for other references.
87. W. MacGregor to SWG, 9 Jan. 1913, MSQ 191, pp. 739-42.
88. Diary 1913.
89. SWG to E. Barton, 30 May 1913, Barton papers, 51/819; Ameer Ali Syed to SWG, 15 July 1913, MSQ 191, pp. 789-92.
90. Reported by C. R. Walsh to SWG, 27 May 1914, MSQ 191, pp. 903-6; the lecturer, Geoffrey Butler, was the nephew of Dr Butler, the Master of Trinity College.
91. C. M. Tenison (from a hotel in Montreaux) to SWG, 23 Oct. 1913, MSQ 191, pp. 833-36; Griffith had begun translating Dante’s love poems, the “Vita Nuova”.
92. SWG to E. Barton, 30 July 1913, Barton papers, 51/825.
93. Diary, 1913.
Chapter 12. A World Collapses

1. SWG to E. Barton, 30 July 1913, Barton papers, 51/825.
2. E. Barton to Jean (wife) Barton, 12 Oct. 1916, Barton papers, 51/872; the letter refers to Duncan's case (note 12 below) and Welsbach v. Commonwealth 1916, 22 CLR, 268.
15. Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (Engineers' case), 1920, 28 CLR, 129.
18. Federated Felt Hatting Employees Union of Australasia v. Denton Hat Mills Ltd and others (felthatters' case) 1914, 18 CLR, 88, cited pp. 91–92, 94.
19. R. v. Commonwealth Court of Conciliation and President and Australian Builders' Labourers' Federation ex parte Jones and others, ex parte Cooper and Sons and others (builders' labourers' case) 1914, 18 CLR, 224, and 1917, 24 CLR, 396, Privy Council see note 26 below.
20. R. v. Commonwealth Court of Conciliation and Merchant Seamen's Guild of Australasia ex parte Holyman and Sons Ltd and others, (merchant seamen's case), 1914, 18 CLR, 273.
26. See note 19 above.
29. Trivett and another v. McDonald and another, 1919, 26 CLR, 156.
41. Eather v. the King, 1914, 19 CLR, 409; see Ibrahim v. the King, 1914, A.C., 599 and Arnold v. the King Emperor, 1914, A.C., 644.
47. Michael v. Smithers and another, 1915, 19 CLR, 712.
48. In re Eather v. the King, SWG statement, 15 June 1915, 20 CLR, 147; this followed the disagreement with Isaacs in Corbet v. Lovekin, note 5 above.
51. Diaries 1915–16; D. Grant to SWG, 17 July 1916, MSS 363/5X, pp. 94–95.
53. Diaries 1915–16; D. Grant to SWG, 17 July 1916, MSS 363/5X, pp. 94–95.


67. SWG to R. M. Ferguson, 24 June 1914, Novar papers, 696/3750; see Chapter 11, note 14.

68. SWG to R. M. Ferguson, 4 Aug. and 4 Sept. [enclosing observations] 1916, Novar papers, 696/4704 and 4707; copy paper also in MSS 363/8X.


70. H. Galway to SWG, 17 Sept. 1914 (and following letters], MSS 363/5X, pp. 51–52.


72. SWG to R. M. Ferguson, 5 and 15 Dec. 1915, Novar papers, 696/3756, 3769.


74. SWG to R. M. Ferguson, 5 Jan. 1916, Novar papers, 696/3723.

75. Ibid., 24 Apr. 1918, Novar papers, 696/3700.

76. Diary 1916; see note 75 above and chap. 11, note 92; he retained the notice of election in his papers, MSS 363/12X.

77. R. M. Ferguson to W. M. Hughes, 15 March 1916, Novar papers, 696/2463.

78. SWG to R. M. Ferguson, 19 May 1916, Novar papers, 696/3739.


83. W. Goold-Adams to SWG, 19 May 1917, MSS 363/5X, pp. 120–120a.

84. C. Baker to SWG, 25 May 1916, MSS 363/5X, pp. 79–81.

85. Copy of memorandum in MSS 363/8X; SWG to R. M. Ferguson, 31 Aug. 1917, Novar papers, 696/3683.

86. Copy of memorandum in MSS 363/8X; see chap. 11 note 66.

87. Copy of manuscript in MSS 363/8X; see chap. 11 note 69.


90. Copy report (ordered to be printed for Commonwealth of Australia, 4 Apr. 1918, No. 55) and associated correspondence on file, Commonwealth Archives, CRS A2/18/1644; Ferguson had told Lord Stamfordham on 10 Nov. 1916 that Griffith and Barton, “the two most notable and experienced men in Australia” agreed that the conscription referenda had to be conceded, Novar papers, 696/10454.


92. R. M. Ferguson to W. M. Hughes, 30 Sept. 1918, Novar papers, 696/2741.

93. Law Institute of Victoria to W. A. Watt, Acting Prime Minister, 7 Dec. 1918, PM 1918/696/33 on file Judges’ pensions and salaries, correspondence of the Attorney-General’s Department, Australian Archives, CRS A432, 3360.


96. Copy of memorandum in MSS 363/8X; SWG to R. M. Ferguson, 23 Apr. 1919, Novar papers 696/3704.

97. Report of farewell ceremony in 26 CLR, v–xiii. J. W. O’Halloran was the principal registrar; E. Barton to SWG, 23 June [cited] and 12 July 1919, MSS 363/5X, pp. 146–147 and 155–156; Groom was Acting Attorney-General for the commonwealth; for Feez, see Johnston, Queensland Bar, p. 51.

98. Draft SWG to W. H. Irvine, 26 July 1919, MSS 363/5X, pp. 171–172; E. Barton to R. M. Ferguson, 11 Nov. 1919, Novar papers, 696/4106–7; “We all — every member of the Cabinet — desired to give it to Sir Edmund as a reward for his long and distinguished service, but were forced reluctantly that the hour called for a man in the prime of his
life”, W. M. Hughes to R. M. Ferguson, 16 Oct. 1919, Novar papers, 696/2824; Ferguson added as reasons Barton’s precarious health and the possibility of Labor winning the election, in Ferguson to S. of S., 27 Nov. 1919, C.O. 418/955, and Novar papers, 696/2283.

99. Copy R. M. Ferguson to E. Barton, 17 Nov. 1919, Novar papers, 696/4104-5; Griffith’s communication to Barton which Novar described as “a hard, unsympathetic letter” has not been located.

100. F. G. Duffy to SWG, 18 June 1919 (irritations), 23 Dec. 1919 (feudal), MSS 363/5X, pp. 148, 226-28; Griffith agreed as to his colleagues repeating this verdict to his cousin with the comment “you can judge of my pleasures of the last year or so”; draft SWG to H. E. Griffith, 27 Dec. 1919, MSS 363/3X, pp. 291-94.

101. See note 97 above; copy of memorandum in MSS 363/8X; SWG to R. M. Ferguson, dated 23 Aug. 1919, Novar papers, 696/3715-22; it was published in the Brisbane Daily Mail, Sydney Sun, Melbourne Herald, and Adelaide Advertiser, E. Barton to R. M. Ferguson, 4 Nov. 1919, Novar papers, 696/4091-2; T. L. Boyonth to SWG, 30 July 1919, MSS 363/5X, p. 188.

102. Anon to Mr Thynne (?A.J.], Barton papers, 51/933; the author thanked Thynne for sending him a copy of Griffith’s article in the Daily Mail.


104. See details of payments, especially Kelso King to SWG, 8 Sept. 1919, “payment in full of all indebtedness to the executors of Eliza R. Hall”; in Apr. 1914 Griffith paid £5,880 leaving a debt of £10,400, MSS 363/11X; diary 1919; he had negotiated about “Merthyr” with the Queensland government in 1909, saying he would be tempted by an offer of £25,000, but it was not made, PRE/A461, SA.


109. R. M. Ferguson to SWG, 1 May 1920, Novar papers, 696/3680.


111. F. G. Duffy and G. Rich to SWG, 18 June 1920, MSS 363/5X, pp. 240-1; J. Pring to SWG, 6 July 1920, MSS 363/5X, pp. 235-38; SWG (telegram] to R. M. Ferguson, 6 July 1920, Novar papers, 696/9067; Pope Cooper to R. M. Ferguson, 28 Feb., 18 Mar. and 11 May 1920, reporting family held no hope of Griffith ever getting better, Novar papers, 696/7381, 7379 and 7378.


114. Isaacs in Engineers’ case, 28 CLR, 129; see note 15 above.

115. Obituaries were published in many newspapers, see for instance Brisbane Courier, Sydney Morning Herald, Melbourne Age and Argus, 10 Aug. 1920; volume of his papers contain telegrams (83) and letters (66) of condolences, MSS 363/17X.

116. Will, copy in Ecclesiastical proceedings. Supreme Court of Queensland, 577/1920, QSA.

117. Diary, 1919; J. Le Gay Brereton, Sydney University Librarian, to SWG, 9 July 1919, MSS 363/5X, pp. 150-51; Law Book Co. to SWG, 9 July 1919, MSS 363/5X, p. 149.

118. From his 1908 translation Canto xxviii, ll. 1-6, 33-36; diary 1919.
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Diaries, 1862-1915. 54 volumes in four boxes, MSQ 194-197, Dixson.

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Campbell-Bannerman papers. Add. MSS 52516, British Library.

A. Inglis Clark papers. C4, Tasmanian University Archives, Hobart.

Hume Cook papers. MS 601, National Library, Canberra.

C. Crisp papers. MS 743, National Library, Canberra.

A. Deakin papers. MS 1540, National Library, Canberra.

Denman (Lord) papers. MS 769, National Library, Canberra.


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J. Hall papers. General Assembly Library, Wellington, New Zealand.

H. B. Higgins papers. MS 1057, National Library, Canberra.


J. L. Musgrave. See Field-Musgrave papers.

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A. British

[E. Griffith and family]

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[E. Griffith and family]

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Index

Aberavon, 324
Aberdeen, 324
Aberystwyth, 323, 324
Abington, 243, 323
Arnold, writer on insurance, 26

art, 15, 17, 71, 84

galleries: Brisbane, 286; England, 16, 17, 71, 324; Melbourne, 15, 62; Paris, Louvre, 17; Rome, Vatican, 16, 17; Sydney, 257, 286

societies: Queensland, 180; Sydney, 286

Ashley, E., 127

Ashwell, engineer, 63, 65

Asia, 130, 149, 316. See also China, Japan

asylums, 309

SWG policy towards, 115-16, 379 n32, n34, n35

Athens, 150

Atherton Tableland, 182

AthiU, CH., 139-40, 384 nl5

Atkin, R.T., 31

Atkin, Sir R., 324

Atkinson v. Long [property], 1885, Q LJ. 11, 99:119

attorney-general, 235, 256

Commonwealth: 293; Deakin, 257, 260; Drake, 261, 263, 264; Groom, 356, 410 n97; Hughes, 293, 296; Isaacs, 266; Symon, 262-66

New South Wales: Wise, 145

Queensland: Cooper, 65; Garrick, 75; SWG, 30, 33, 35, 41, 43, 45, 47-58, 63, 90, 112, 118, 175, 178-80, 182-84, 256, 371 n77, 387 n1; Lilley, 15; MacDevitt, 41, 53; Pring, 386 n36; Rutledge, 88, 113; Ryan, 356-57

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Attorney-General (Queensland) v. Simpson [dumpling], 1878, Q SCR, V. 98:48

Auburn Vale, station, Cudal, 285, 347

Augathella, 243

Australia, 324

Gold Recovery Co. v. Day Dawn P.C. Gold Mining Co. Ltd [patents], 1902, QSR, 123:237, 398 n35

Australia House, London, 323

Mutual Provident Society [AMP], 37-38. See also Merry's case


navy, 134

Australia, New. See Lane, W.

Steam Navigation Company, 56, 305-6

Steamships Ltd v. Malcolm [constitutional], 1914, 19 CLR., 298:326

Sugar Producers' Association Ltd v. Australian Workers' Union [conciliation and arbitration], 1916, 23 CLR., 58:335

Transcontinental Railway Syndicate, 85, 110

United Steam Navigation Company Ltd v. Hiskens [delivering], 1914, 18 CLR., 646:338

Austria, 17, 205

Ayr, 111

Baden-Baden, 18

Bacchus Marsh. See also "Greystones" Bacchus Marsh Express, 203

Baird, barrister, 25, 27, 367 nl4, nl8

Baker, R.C., 190, 193, 197, 204, 206, 394 n63, 397 n6

Ballarat, 181

Ballard, R., 60

banks, 20, 171, 278, 279-80, 309, 314, 323, 327, 337, 386 n59

Australian Joint Stock, 18

Consolidated, 18

crashes 1866, 18, 21

English, Scottish and Australian Chartered, 180

New South Wales, 236

delicious England, 111-12, 177, 391 n74

Queensland National, 112, 143, 177, 181-82, 246, 392 n90, 396 n2

Royal, 143, 384 n24

Baptists, 1, 4, 27, 28

Church, Ipswich, 4

Tabernacle, Brisbane, 364 n17

Barcaldine, 161, 163, 166, 170, 348

Barlow, A.H., 161

Barrett, J., 295

Barton, E.

in federal movement, 188, 195, 197, 201, 203, 204, 205, 206, 207, 209, 210, 211, 212, 215, 249, 250

as federal politician, 255-59


Barton, J., 295, 308, 405 n19

Basilisk, 36

Bath, 3, 16, 19, 20, 363 n3

"Battyneety", station, 338

Baxter, R., 3

Baxter v. Commissioner of Taxation [constitutional], 1907, 4(2) CLR., 1087:269-72, 292

Baxter v. Ah Way [constitutional], 1909, 8 CLR., 626:291

Bayne and another v. Blake and another (appeals practice: probate), 1906, 4(1)
CLR; 1907, 4(1) CLR, 977; 1908, 5 CLR, 497:284-85; 1908, 6 CLR, 179, 304; 1909, 9 CLR, 347, 360, 366: 304; 404 n105, 406 nn42-44
Baynes v. Osborne [mining], 1873, QSCR. IV, 1:37, 369 n64
Baynton, Barbara, 286, 320, 321, 347-48, 373 n54, 407 n79
Baynes v. Osborne [mining], 1873, QSCR. IV, 1:37, 369 n64
Baynton, Barbara, 286, 320, 321, 347-48, 373 n54, 407 n79
Beattie, F., 86
Beaulands, Miss, 181
Bedford, Adeline, Duchess of, 321
Belgium, 16, 221
Bellamy, E., author Looking Backward, 150, 386 n63
Beor, H.R., 48, 50
Bernard, F.R., 123
Berry, G., 124, 136, 383 n5
Berwin, A.G., 329
Berwin v. Donohoe [trading with the enemy], 1915, 21 CLR, 1:329
Berwin v. Donohoe [trading with the enemy], 1915, 21 CLR, 1:329
Bevan, T., 145
Bible Society. See Christianity
bicycling. See sports
Bigelow, P., 286, 407 n79
Biggenden, 168
Biggs, R., 27
Bignold, H.B., 405 n14
Bilby, F., 178
"Bilby v. Hartley and others [intimidation], 1892, QLJ, IV, 137:178-79
"Bingera", plantation, 243
Birmingham, 3
Black, M.H., 138, 173, 391 n66
Blackall, 178
Blackburn, Dr, 349
Blackstone, Sir William, 178, 308
Blake, I.J., 25, 48, 50, 51, 52, 367 n14
Blake, H., 155-56
Blakeney, C.W., 24
Blantyre, 19
Blaxland, Lt Col G.G., 133
Bloomfield River, 115, 129
Bock, H.C., 329
Bogen, H., author Scientific Library, 11, 365 n57
Bologna, 17, 18
Bolshevism, 360
"Boondoon", station. See Adavale
boot trade, 298, 301
Bootmakers' case (Whybrow's) [conciliation and arbitration], 1910, 11 CLR, 1:298-99, 332, nn30-31, 406
Booth Trades Employees' Federation, 298
Bouchut, J.P., 206, 210-11, 402 n30
Bowen, 59, 60, 105, 111
Bowen, G. See governors
Bowen River, 116
Bowles v. Federal Commissioner of Taxation [taxation], 1919, 26 CLR, 205:341
Bowman, E., 10
Braddon, E., 207
Bramston, J., 45, 71, 106
Brassey, 1st Baron, 323
Bray, J.C., 190, 199, 201
Brecknock, 140
Brentnall, T., 387 n76
Brewer, P., 17
Brennan, C.J., 286, 373 n54
Brennan, J.O.N., 169
Bridge v. Bowen [election], 1916, 21 CLR, 582:345-46
Brighton, 324
Brisbane. See also courts, homes, Schools of Arts, universities
Benn's Hotel, 41
Boomerang, 150
Cash's Crossing, 60
cemetery, Toowong, 183
Chamber of Commerce, 57, 161
churches: Ann Street Presbyterian, 311; City Tabernacle [Baptist], 364 n17; St John's Cathedral, 229; Wharf Street Congregational, 8, 365 n43
Council, 119, 130, 380 n55. See also McBride and Co. case
Courier, 31, 37, 45, 94, 148, 151, 230, 290
Courier Hall, 148
Exhibition [Show], 63, 108, 287
gallery, art. See art
gaol. See gaols
High Court sittings, 257, 262, 263, 264, 265, 266
hospital, 90, 92, 118
Immigration Depot, 90, 96, 97, 104
Industrial Home, 115
Licensing Authority, 93
Newspaper Company Limited, 37
Norman's Creek, 27
Parliament Hall, 148
Parliament House, 159
Philosophical Society, 27
Queenslander, 45
Reception Home, 117-18
River, 4, 28, 60, 65, 74, 77, 82, 109, 119, 133, 321, 358. See also Moreton Bay
stations: Roma Street, 254
streets: Adelaide, 13; Albert, 123, 180; Alice, 180; Ann, 311; Caxton, 148; George, 181; Gregory [Terrace], 180; Margaret, 180; Moray [New Farm], 84; Queen, 61, 74; Wickham [Terrace], 34, 84, 181
suburbs: Auchenflower, 84; Coopers Plains, 61; Fortitude Valley, 111; Hamilton, 84; Ithaca, 250; Kangaroo Point, 104, 153; Lytton, 252; New Farm, 35, 61-62, 84, 219, 321, 361 [see also homes, "Merthyr"]; North, 4; Oxley, 41, 50; Pinkenba, 321; Sandgate, 28, 217, 256; South, 115, 119, 123, 148; The Gap, 21; Toowong,
77; Wellington Point, 246, 387 n76

_Telegraph_, 31, 48, 148, 161, 387 n76, 395 n67

Town Hall, 46, 65, 122

Tramway Company, 332-34

Victoria Bridge, 119

Victoria Park, 320

Worker, 151

Wyllie's Crossing, 60

Bristol, 16, 19, 20

British, establishment, 21, 158

Foreign Bible Society, 5

institutions: Academy, 352; Board of Trade, 57

migrants, 76, 104, 105, 198. See also migration

National Fair Trade League, 141

British government. See also imperialism, legislation

Admiralty: on Queensland navy, 132, 134, 138, 146-47, 159, 382 n103, 385 n42

Colonial Conference, 1887, 106, 129, 131, 135, 136, 138-42, 145, 146, 156; 1907, 268

Colonial Office: Aboriginal evidence, 53; acting governor, 93; Blake case, 155; Chinese, 56, 175, 128; Commonwealth, 287, 288, 350; Douglas, 45, 128; federation, 206, 208, 209, 210, 211, 213-14, 274; jurisdiction over offshore islands, 52, 374 n86; legalization of marriages, 52; Navy, 132, 138, 146, 159; New Caledonia, 129, 130; New Guinea, 89, 99, 100, 125, 126, 127, 128, 129, 138, 145, 154, 155, 177, 249, 250; New Hebrides, 89, 130, 131, 136; northern separation, 105, 138, 173, 175; Pacific islanders, 73, 94, 105, 171, 172; steel rails case, 64, 71;SWG visits to, 71, 141, 323

Conservative, ministry (1886-87), 141

Foreign Office: Chinese, 175; New Guinea, 127; New Hebrides, 131

House of Commons, and federation, 188, 208, 212, 269; Pacific islanders, 73; SWG visit to, 71

House of Lords, legal members, 351; powers, 192; SWG visit to, 71

law officers, 138, 269-71, 322, 341-42, 350

monarch, 139, 141, 342

parliament: form of, 189, 192-93, 199, 200, 202, 223, 270, 291, 341

Broken Bay, 194

Broken Hill, 296

Broken Hill Proprietary Company (BHP), 296, 299. See also R. v. Commonwealth Court ... ex parte B.H.P.

Bronte, C., author Jane Eyre, 24

Brookes, W., 86, 148, 150, 171, 390 n49

Brown, N.J., 207, 382 n96

Brown, Mrs T., 323

Brown, T.H. See Griffith, S.W., family

Browne, W.H., 223-24

_Browne v. Cowley_ [exclusion from House], 1895, 6 QLJ, 234:223-24, 397 n14

Brue, 130

Bryce, J., 186, 269-70, 320, 407 n79, author _The American Commonwealth_, 186

Buchan, J., author _Thirty-Nine Steps_, 409 n56

Buckland, J.F., 86, 376 n53

Bude, Cornwall, 324

_Builders' Labourers' case_ (conciliation and arbitration), 1914, 18 CLR, 224 and 1917, 24 CLR, 396:332-33, 334, 335, 336 n19, 408

Bulcock, R., 78, 148

_Bulcock against Ward_ [electoral roll], 1882, QLJ, 1, 103:78

Bulgin, E., 14, 23, 26, 27, 28, 368 n23, n25

_Bulletin_, the Sydney, 285, 386 n59

Bullmore, Dr, 348, 349

Bundaberg, 100, 112, 131, 135, 170, 171, 217, 237, 322

circuit court, 34, 240, 243

_Mulgrave Planters' and Farmers' Association_, 97

Bunyan, John, 3

Burdekin River, 100, 102

Bridge, 60

burial grounds, 1, 2

Burns, Philp, 132, 145

Burrum, 60

bush, 4, 113, 168, 338, 342, 397 n10

country representation, 46, 52

country views, 99

violence, 25, 240-45, 367 n13

Buzacott, C.H., 42-43, 45, 47, 63, 94, 151, 370 n75

Byrnes, T.J., 59, 182-83, 206, 250, 387-88 n1, 395 n66, 400 n68

Byron, G.G., author _Childe Harold_, 16

Cabinet, Queensland. See Parliament

Cadogan, Countess of, 141

Cairns, 111, 115, 116, 182, 305, 398 n48

Pyramid Sugar Company, 114

Cairns, W.W. See governors

_Caldicott, re_ (insolvency), not reported, 226

Callaghan, Dr, 25

Calvinism, 268

Cambooya, 236. See electorates

Cambridge. See universities

Cambridge, Duke of, 141

Cameron, Dr, 348

Camooweal, 176

Campbell, A., 62

_Campbell, John v. Commissioner for_
Index 431

Railways [negligence and fraud], 1902, SCT/AL 29-31:232-33, 398 n27
Campbell, J.R., 88
Campbell, T., 88
Campbelltown, 196, 236
Canada, 82, 89, 142, 186, 323, 352.
See also federation, Canadian lessons
Canning Downs, 49
Canterbury, 324
Cape Bedford, 115
Cape Horn, 15
Cape York, 114
Cardiff, 139
Cardigan, 139
"Cardington Hall", Molong, 286, 322, 347, 404 n107
Cardwell, 112, 114
Carnarvon, 4th Earl of, 56, 57, 142, 156
Carnarvon, ranges, 229
"Carnarvon", station, 228, 229
Carpentaria, Gulf of, 84, 111
Carpentaria Times, 144
Carr, E.N., 114
Carrington, 1st Earl, 386 n63
Cartela s.s. v. Inverness-shire s.s. [salvage], 1916, 21 CLR, 387:344-45
Casey, J.J., 63, 207
Casey, R.G., 153
Cashmore v. Chief Commissioner of Railways and Tramways (NSW) [negligence], 1915, 20 CLR, 1:343
Castles, Mr, 264-65
Ceara, 96, 98
Chamberlain, J., 210, 211, 212, 213, 214, 396 n93
Chandler v. Collector of Customs [duty on pictures], 1907, 4 CLR, 1719:281
Chaplin v. Commissioner of Taxes for South Australia [constitutional], 1911, 12 CLR, 375:292
Charleville, 84, 117, 179, 227
Charley Chalk [pen name], 11-12, 42
Charters Towers, 59, 60, 76, 222, 225, 232
Australian Republican and Journal of the Trade Unions of North Queensland, 162
Charybdis, 16
Chaucer, G., 11
chemistry, 9, 10, 237, 286. See also Australian Gold Recovery Co. case
Chermode, Sir Herbert C. See governors
Chester, H.M., 73
Chia Gee, Ah Kow, Chow Chee, Ong Seet and Chow Quin and others v. Martin [immigration], 1905, 3 CLR, 649:282
Chicago, 142
chicanery, political, 340
Childley v. Smithers and another [appeal practice], 1915, 19 CLR, 712:342
Childers, 243
China, 221
Chinese, 143, 243
anti-Chinese leagues, 143, 149
Commissioners [1889], 143
footman, 45
gold diggers, 25, 149-50
laundry, 299
seamen, 56-57
sugar labourers, 102
SWG policy towards, 55-56, 112, 143-44, 148, 149, 150, 175-76, 198
Christianity, 1-5, 8-10, 11, 13, 15, 16, 20, 21, 22, 29, 43, 52, 54, 71, 88, 108, 202, 245, 252, 256, 268, 280, 358
Bible Society, 72
Clericalism, 360
Lord's Day Observance Society, 8
missionaries, 130, 131
Chronicles of Catlingford, 24
Chubb, C.E., 75, 182, 225, 227, 230, 231, 397 n22
Church of England, 1, 2, 20, 59, 63, 71, 177, 319
St John's Cathedral, Brisbane, 229, 400 n77
St Peter's, Brighton, 63
St Peter's, East Maitland, 5
Trinity Church, Brisbane, 118
Westminster Abbey, London, 71
City of Melbourne, 4
Clancy v. Butchers' Shop Employees
Union and President [conciliation and arbitration], 1904, 1 CLR, 181:272
Clarence River, 245
Clark, A. Inglis, 186, 188, 191, 193, 194, 195, 197, 198, 199, 201, 204, 206, 207, 214-15, 257, 259, 266, 267, 268-69, 386 n63
Clark, Lady, 287
Clarke, Marcus, 63, 373 n54
class and employment, 163, 167, 168, 296. See also strikes
bourgeois affluence, 29, 368 n30. See also homes, "Merthyr"
business, 149
coloured labour. See Pacific Islanders employees, 272-73, 296-300, 332-36, 342, 353, 356. See also boot trade,
Builders' Labourers, Federated Engine-Drivers, felthatters, merchant seamen, public service, timber trade, tramways, Waterside Workers employers, 78, 161, 167
gold miners, 35, 149
iron-workers, 19-20
manufacturers, 43, 292, 304-5
merchants, 43, 64, 124, 280, 325, 328
pastoralists, 31, 35, 36, 37, 42, 44, 45, 52, 54, 58, 64, 76, 88, 93-94, 103, 113, 116, 132, 143, 161-68, 178-80, 208; Pastoralists’ Association, 162
property owners, 30, 292-93, 304
seamen, 56-57, 124, 299, 300, 334
selectors, 47-48, 58, 75, 93-94, 114, 171, 228
servants, 4, 34, 45, 76, 82, 83, 96-97, 103, 104, 106, 116, 124, 304, 349
shearers, 178-80, 242, 272
shipowner, 338
social mobility, 27
squatters, 219, 221, 228, 242, 306-7
steamships’ masters, navigating officers, 160, 299, 300
storekeeper, 220
strikes, 1891
town liberals, 31, 93, 147
wealthy, 46, 93, 105, 110, 112, 147
working, 1, 2, 21, 63, 71-72, 400 n77
Church Building Society, 4
churches: Blackheath, ‘72; Brisbane, 8, 20, 21, 27, 108; Ipswich, 4, 245, 365 n33; Merthyr Tydfill, 12, 19, 363-64 n3; Portishead, 2, 364 n11, n12; Sydney, 4; Wiveliscombe, 2, 3, 364 n13
Colonial Missionary Society, 3, 21, 364 n23
Highbury College, 1,363 n3
Home Missionary Society, 4, 8
London Missionary Society, 5
Conqueror, the, 288
conscription, 354. See also military, First World War
conservative party. See British government, Nationalists
Constantinople, 348
Cook, Hume, 401 n9
Cook, Sir Joseph, 323, 349, 350
Cooktown, 99, 103, 104, 114, 126, 132, 382-83 n109
circuit court, 52, 76, 217, 240, 241
Independent, 114
Progress Association, 114
Cooper, F.A., 24, 47, 48, 88
Cooper, P.A., 49, 65, 182, 221, 224, 225, 226, 227, 228, 230, 231, 232, 234, 237, 239, 296, 397 n22
Cooper v. Jones, unidentified case, 26
Cooran, 182
Coote, W., 111, 378 n9
Corbet v. Lorekin and others [wartime censorship], 1915, 19 CLR, 562:327-28
"Cordelia Vale", plantation. See Herbert River
Corfield v. Groundwater [property rights of women], 1868. QSCR, 1, 194:26, 367 n15
Court, in re (escape), 1871, QSCR, 11, 171:33, 369 n48

Colonial Sugar Refining Coy Ltd v. Attorney-General of Commonwealth and others [evidence, royal commissions], 1912, 15 CLR, 182:294-95, 326
Comet, 59, 60
Commissioners of the State Savings Bank of Victoria v. Permewan, Wright and Co. Ltd [banking], 1914, 19 CLR, 457:337
Commonwealth v. Registrar of Titles for Victoria [easements], 1918, 24 CLR, 348:337-38
communism, 150. See also Bolshevism
"Condamine Dick", Aborigine, 384 n30

Conferences. See British government, federation
Intercolonial, 1875: 57; 1877:57; 1883:89-90, 125, 126; 1886:134-35; 1888:172
Congregationalists [Independents], 1, 2, 3, 4, 5, 8, 21, 63, 71-72, 400 n77

Clermont, 25, 116, 143, 149-50, 161, 162, 163, 166, 242
Cloncurry, 84, 111, 118
clothes (dress), 11, 27, 28, 71, 108, 137, 141, 216, 320, 396 n1
Clough v. Leathy [evidence, royal commission], 1904, 2 CLR, 139:272
Cock and Howden v. Smith and others [probate], 1909, 9 CLR, 773:302-3, nn. 40-41, 406
Cockburn, J., 189, 190, 198
Cockle, J., 12, 23, 24, 28, 36, 46, 48, 51, 62, 71, 308, 373 n75
Cocos Island, 338
Coen River, 241
Coghlan, T., 207
Coleman v. Piper, unidentified case, 26
Collector v. Day [constitutional], 1871, United States Supreme Court
Collins, Mrs M., 323
Colombo, 322
Mt Lavinia, 322
Colonial Institute, London, 211, 320, 323
Colonial Office. See British government
Colonial secretary, Queensland, 88, 119, 159, 185

Colonial Sugar Refining Coy Ltd v. Attorney-General of Commonwealth and others [evidence, royal commissions], 1912, 15 CLR, 182:294-95, 326
Comet, 59, 60
Commissioners of the State Savings Bank of Victoria v. Permewan, Wright and Co. Ltd [banking], 1914, 19 CLR, 457:337
Commonwealth v. Registrar of Titles for Victoria [easements], 1918, 24 CLR, 348:337-38
communism, 150. See also Bolshevism
"Condamine Dick", Aborigine, 384 n30

Conferences. See British government, federation
Intercolonial, 1875: 57; 1877:57; 1883:89-90, 125, 126; 1886:134-35; 1888:172
Congregationalists [Independents], 1, 2, 3, 4, 5, 8, 21, 63, 71-72, 400 n77
Church Building Society, 4
churches: Blackheath, ‘72; Brisbane, 8, 20, 21, 27, 108; Ipswich, 4, 245, 365 n33; Merthyr Tydfill, 12, 19, 363-64 n3; Portishead, 2, 364 n11, n12; Sydney, 4; Wiveliscombe, 2, 3, 364 n13
Colonial Missionary Society, 3, 21, 364 n23
Highbury College, 1,363 n3
Home Missionary Society, 4, 8
London Missionary Society, 5
Conqueror, the, 288
conscription, 354. See also military, First World War
conservative party. See British government, Nationalists
Constantinople, 348
Cook, Hume, 401 n9
Cook, Sir Joseph, 323, 349, 350
Cooktown, 99, 103, 104, 114, 126, 132, 382-83 n109
circuit court, 52, 76, 217, 240, 241
Independent, 114
Progress Association, 114
Cooper, F.A., 24, 47, 48, 88
Cooper, P.A., 49, 65, 182, 221, 224, 225, 226, 227, 228, 230, 231, 232, 234, 237, 239, 296, 397 n22
Cooper v. Jones, unidentified case, 26
Cooran, 182
Coote, W., 111, 378 n9
Corbet v. Lorekin and others [wartime censorship], 1915, 19 CLR, 562:327-28
"Cordelia Vale", plantation. See Herbert River
Corfield v. Groundwater [property rights of women], 1868. QSCR, 1, 194:26, 367 n15
Court, in re (escape), 1871, QSCR, 11, 171:33, 369 n48
courts
Admiralty, British, 52
Chancery, British, 302

circuit (mainly of Supreme Court, Queensland), 24, 25, 26, 51-52, 240, 245

Conciliation and Arbitration:
Commonwealth, 272-73, 288, 296-301, 332, 337; New South Wales, 288

District (Queensland), 24, 53

Equity, British, 302

High, of Australia, planning of:
Supreme, Tasmania, 266, 267, 308
Supreme, United States. See federation: lessons, America
Supreme, Western Australia, 282, 314

Cowley, A.S., 223, 387-88 n1, 390 n43
Cowley, Marie, 390 n49
Cowlishaw, J., 31
Cowpastures, 235
Crawshay, W., 139
Cribb, B., 24, 27, 367 n4
Cribb, R., 12, 20, 31
Cribb, T., 11
Cribb v. Ede, unidentified case, 38

cricket. See sports

Crishna, 36, 38, 52, 54, 372 n23. See also Regina v. the Crishna

Crocodile Creek goldfield, 94

Croydon, 111, 112, 149

Cudal. See "Auburn Vale"

"Cullin-La Ringo", station, 72

Cunnamulla, 168, 243
Curtis, L., 352

custom duties. See finances

Cyfarthfa Castle, 139

Dahlke, A., 228-30

Dalby, 45

Dalgarro v. Hannah (appeal practice), 1904, 1 CLR, 1:283-84

Dalley, W.B., 33, 381 n78

Dalley, in re (admission barrister), 1871, QSCR, 11, 162:33

dancing, 27, 35, 83-84, 108, 321, 322

Bachelors' Ball, 27

Government House, 27, 108

Mayor's Ball, 27, 108

Daniels, H., 224

Dante Alighieri, 9, 246, 286, 288, 294, 320, 324, 348, 361-62, 399 n59, 407 n79, 409 n52

Divine Comedy, 320, 399 n59, 407 n79

Francesca, 246, 399 n59

Inferno, 246, 286, 361, 407 n79

Two Stories from Dante, 399 n59

Ugolino, 246, 399 n59

Vita Nuova, 323, 467 n91

D'Arcy, W.K., 94-95

Dardanelles, 348

Darley, Sir Frederick, 206, 211, 213, 215, 395 n64

Darling Downs, 47, 48-49, 64, 75, 76, 88, 236

Darnley Island, 36

Davenport, G.H., 36, 48, 58, 86

Davenport, ex parte (land), 1873, QSCR, 111, 95:36, 369 n59

Davidson, A., 224

Davidson, J.E., 105, 170

Davies, Capt. J.G., 97-98

Davies, Mary, 310

Davis, A.H. See Rudd, Steele

Dawson, W., author German Socialism, 150

Deakin, A.: as Victorian politician, 89, 136, 139, 141, 153, 185, 186, 189, 190, 197, 199, 206, 207, 209, 211, 215, 250; as federal politician, 255-61, 263-66, 268, 269, 286, 287, 290, 360, 386 n63, 394 n63, 397 n6

Deakin v. Lyne and Webb (constitutional), 1904, 1 CLR, 585:267, 268, 271

Dean, G., 407 n70

de Costa, Mr, 27

defence, 125, 126, 138, 142, 154, 249, 252, 310-11, 326, 354. See also military, strikes

Colonial Defence Committee, 135

federal power of, 191, 200, 328, 331

intercolonial action, 90, 154

naval, 114, 125, 126, 131-35, 145-47, 148, 158-59, 252, 324, 382 n103, n105

overseas service, 132, 133-34

Queensland Defence Force, 108, 159

SWG policy, 131-35, 138, 159, 196, 249, 383 n9

Woolwich Arsenal, 18, 324

de Libert v. de Libert (divorce), 1874, QSCR, IV, 98:51, 371 n13

D'Emden v. Pedder (constitutional), 1904, 1 CLR, 91, 266, 267, 268

Denbigh, 8th Earl of, 110

Deniliquin, 168

station, 235

Denman, 3rd Baron. See governors-general

D'Entrecasteaux Island, 127

Derby, 16th Earl of, 126, 127
de Worms, Baroness, 141

Diamantina, 112

Dibbs, G., 153, 198, 201, 262, 263

Dickens, C., author A Tale of Two Cities, 14; Barnaby Rudge, 11; David Copperfield, 11; Nicholas Nickleby, 24; The Pickwick Papers, 24

Dickson, J.R., 43, 44, 62, 64, 72, 84, 88, 99, 111, 124, 142, 145, 147, 207, 208, 209, 210, 211, 212, 213, 215, 248, 257, 395 n66, 396 n93

Dilk, Sir Charles, 386 n63

dissolution of ministry, 321, 349-50

Dixon, W.B. See Griffith, S.W., family

Dobson, H., 206, 207

Doddridge, P., 3

Donaldson, J., 188, 190

Donaldson, St Clair, G.A., Archbishop of Brisbane, 319-20, 357

Doneley, J.T., 234

Doodeward v. Spence (property in a corpse), 1908, 6 CLR, 406:307

Dougall, J., 29

Douglas, A., 190, 207

Douglas, J., 43, 44, 45, 46, 54, 59, 60, 62, 70, 72, 86, 88, 110, 113, 128, 129, 168, 370 n83, 381 n84

wife (1st), 21, 45, 60

wife (2nd), Sarah Hickey, 45, 128, 381 n84

Dover Castle, 15

Dowling, Mr, 35

Dowling v. Fritz and others (wounding a snake), 1882, QLJ, 1, 82:77

Downer, J., 138, 190, 191, 195, 205, 394 n63

Doyle, G., 228-30

Doyle, G. and M. See Griffith, S.W., family

Drake, J.G., 169, 261, 264. See also attorney-general

Drake, W., 132, 146-47

Drummond, H., 176

Drury, E.R., 112, 135, 143, 159, 378 n12, 392 n90

Drysdale, brothers, 102

Ducie, Lord, 141

Duckmann v. Duckmann and Irwin
plural voting, 86, 197

electorates, Queensland: Aubigny, 88;
Balonne, 31; Blackall, 87; Brisbane, 31;
Bulimba, 86; Bundamba, 148; Burke, 87,
148; Burnett, 87; Cambooya, 224-25 [see
also Cambooya, in re. Electoral Petition
[Daniels v. Mackintosh], 1899, 9 QLJ,
341: 224-25, Carnarvon, 148, Charters
Towers, 148; Clermont, 42, 87; Cook,
87, 88; Croydon, 223; Darling Downs,
86, 88; Drayton, Toowoomba, 86; East
Moreton, 31, 40, 386 n37; Enoggera, 86,
87, 88; Fortitude Valley, 86, 148;
Gregory, 87; Gympie, 87; Ipswich, 86;
Kennedy, 87, 88; Leichhardt, 87, 88;
Logan, 87; Mackay, 87; Maranoa, 87;
Maryborough, 37, 86, 87; Mitchell, 87;
Moreton, 86; Mulgrave, 101, 148; North
Brisbane, 45-46, 86-87, 148, 150, 170,
368 n36, n37; Oxley, 40, 41, 46;
Rockhampton, 86, 87; Rosewood, 86;
South Brisbane, 37; Stanley, 148;
Toombul, 148, 385 n51; Toowong, 148;
Townsville, 87; Warrego, 87; Warwick,
31; West Moreton, 368 n37; Western
Downs, 30; Woolloongabba, 148
electricity, 333, 337
Elim, 115
Eliot, G., author *The Mill on the Floss*, 24
Ellis, J.T., 78
Ely, 324
Emerald, 163
Emerald, 286
Emery, artist, 12
emigration. See migration
ingineering, 15, 75-76, 123, 217
*Engineers’ case [Amalgamated Society of
Engineers v. Adelaide Steamship Co. Ltd]*
[constitutional], 1920, 28 CLR, 129:331,
360-61, 408 n15
England, visits to
federation delegates: 1900, 209-13
SWG: 1886, 15-16, 18-20, 26; 1881, 64,
68, 69-73; 1887, 136-42; rumoured
1890, 156, 158; 1913, 301, 322-25, 346
SWG parents: 1885, 168
son’s (Llewellyn’s): 1894, 217; 1900, 251
English and Scottish Association, 108
Erskine, Commander J., 99
Bethel, 98
Etheridge, gold field, 386-87 n74
Euclid, 9
Europe, 15, 16, 17-18, 19, 23, 55, 56,
62, 71, 73, 89, 104, 128, 130, 147, 170,
171, 353
northern, 103
southern, 103
SWG visits: 1866, 15-20; 1913, 322,
324-25
Evangelicals, 4
Everill, H.C., 145
external affairs, 89-90, 125, 186, 200-201, 249. See also New Caledonia, New Guinea, New Hebrides

Fairfax, John, 3
Fanny, 96
Farey v. Burvett [control bread price in war], 1916, 21 CLR, 433:331
Federated Engine Drivers' and Firemen's Association of Australasia v. Broken Hill Proprietary Co. Ltd [conciliation and arbitration] (case no. 1), 1911, 12 CLR, 398:299 (case no. 2), 1912-1913, 16 CLR, 245:300
Federated Engine Drivers' and Firemen's Association of Australasia v. Colonial Sugar Refining Co. Ltd (conciliation and arbitration), 1916, 22 CLR, 103:334-35
Federated Municipal and Shire Council Employees' Union of Australia v. Lord Mayor, Aldermen, Councillors and Citizens of the City of Melbourne and others (conciliation and arbitration), 1919, 26 CLR, 508:336-37

Index

Empire Lodge, London, 141
Grand Lodge, 27
Provincial Grand Master, 246
Victoria Lodge, 27
Free Trade, party, 289
Fremantle, 282, 322, 325
French. See Languages
French, Lt Col G.A., 131, 132, 133, 134, 164, 165, 168
Frome, 139, 324, 363 n3
Fysh, P., 145, 172, 190, 207, 209, 211
Galloway, W.M., 123
Galway, Sir Henry. See governors
Garrick, J.F., 44, 45, 48, 49, 62, 65, 75, 76, 88, 126, 397 n22. See also agents-general
Garrick, Mrs, 323
Gayundah, 131-33, 135, 146, 158-59, 160, 252, 382 n103, 383 n118
Genoa, 16
geography, 8, 202-3
Queensland Geographical Society, 180, 202
George, H., 151, 386 n66, author Progress and Poverty, 94, 375 n22
Geraldton, 114, 193
Germany, 16, 73, 97, 100, 103, 104, 126, 127, 132, 172, 205, 228-29, 348, 349, 352, 383 n80. See also languages; military: New Guinea
Gibbon, family, 139
Gibbs, F.W., 64
Gibraltar, 322
Gibson, J.A., 376 n57
Gifford, H., 71
Gillespie, J., 389 n35
Gillies, D., 129, 130, 135, 138, 153, 154, 185, 189, 384-85 n33
Gin Gin, Walla scrub, 95
Gladstone, 60
... circuit court, 34
Gladstone, W.E., 127, 386 n63
Gladstone, Mrs, 141
Glamorgan, 139
Glasgow, 18, 19, 324
Glassey, T., 148, 161, 162, 168
Glen Innes, 34
Godhard v. Inglis and Co. Ltd (defamation), 1904, 2 CLR, 78-280
Godwell, Dr, 348
gold, 25, 54, 94-95, 106, 111, 143, 149, 152, 153, 212, 221-22, 235, 237, 238. See also mining
Goldsmith v. Roche (horse-stealing), 1870, QSCR, 11, 55-56, 367 n15
Goldsmith v. Sands (custody), 1907, 4 CLR, 1648-279
Goodenough, Commodore, J.G., 54
Goold-Adams, Sir Hamilton. See governors
"Goomburra", station, 76
Goondiwindi, 115
Gordon, A., 73, 128, 249
Gordon, J.H., 189, 190
Gordon v. Macgregor (contract), 1908, 8 CLR, 316:305
Gore, G.R., 97, 101, 104, 376 n43, n46
Gothenburg, 51
"Gothenburg", Putwain v. English, Scottish and Australian Bank (salvage), 1875, QSCR, IV, 133:51
Gould, J., 181, 358
government. See Parliament
government house, 213, 251, 253, 257, 287, 320, 348, 349
governors, 31, 135, 154, 155-56, 249, 250, 350
Bowen, G., 13, 27, 62, 102; Cairns, W.W., 43, 44, 55, 56, 62, 144, 370 n82; Chermside, H., 249, 288; Galway, H., 350; Goold-Adams, H., 353; Kennedy, A., 44, 45, 56, 62, 72, 370 n88; Lamington, Baron, 211, 212, 213, 246, 248, 249, 256, 400 n68; n78; Loch, H., 134; Musgrave, A., 90, 99, 105, 108, 112, 124, 125, 128, 130, 134, 135, 142, 145, 146, 154-55, 156, 177, 350; Norman, H., 151, 155, 171, 174, 177, 182-83, 217, 249, 400 n77; Robinson, H., 62
governors-general: 197, 200, 202, 205, 212, 249, 250, 291, 350-51; Denman, 322, 349; Dudley, 320-22; Ferguson, 349, 350, 351, 352, 353, 354, 355, 356, 357, 360, 410 n69, n90; Hopetoun, 215, 249, 250, 256, 257, 259, 287; Northcote, 268, 287-88, 320; Tennyson, H., 259, 287
lieutenant-governors: Madden, J., 257; SWG, 208, 246, 253, 287
Gracemere. See Archers
Grafton, 228
Graham, C.J., 42-43, 370 n80
Graham, in re [admission of a Scottish law agent], 1885, QLJ, 11, 81:122
Grant, Dr, 348
Granville, 2nd Earl of, 142
Gravesend, 16
Gray v. Dalgety Co. Ltd (contract), 1914, 19 CLR, 356 and 1916, 21 CLR, 509 and 1919, 26 CLR, 249-339-40
Greece, 18, 86, 150, 202, 354. See also languages
Greene, M., 348
Greene, daughter, 348, 409 n56
Greene, great-grandson, 409 n56
Gregory v. McCafferty [jury late], 1895, SCT/AL, 126:397 n8
Greville v. Williams [superannuation], 1906, 4 CLR, 694:301-2 n39, 406
Grey, Sir George, 193, 197, 201
“Greystones”, station, near Bacchus Marsh, 348
Griffilwraith, 150, 160, 176-77, 181, 183, 386 n60, 387-88 n1, 388 n2, 390 n43
Griffin, T., 25, 367 n13
R v. Griffin (murder), 1868, QSCR, 1, 176:25, 367 nl2
Griffith, S.W. (SWG)
daughter-in-law: Marion Clara Doyle, 286, 319, 407 n107
father, Edward: in England, 1, 2, 3, 361 n1, n3; in Australia, 4, 5, 368 n20; in Brisbane, 8, 13, 18, 19, 20, 21, 22, 23, 27, 29, 35, 43, 58, 62, 70, 71, 75, 88, 92, 108, 139, 141, 152, 156, 180, 183, 245, 358, 392 n97, 400 n77; granddaughters: Edna P.G., 346, 347; Eveline J.G. Brown, 346; Evelyn D.G. Brown, 251, 400 n79; Jemima J.H. Brown, 251, 346, 400 n77; Margaret P. Doyle, Janet E., Frances L., 326, 347
grandfather: Peter Walker, 5, 9, 19
grandmother: Elizabeth G., 5, 19
grandsons: Owen S.G., 326, 347; Tom S.G. Brown ("boy"), 229, 253, 295, 346, 409 n53; Tom S.G. Brown ("boy"), 229, 253, 295, 346, 409 n53
great-grandfather: Henry G., 139
great-grandmother: Jane Hippie, 324
mother, Mary Walker: in England, 1, 2, 3; in Australia, 5; in Brisbane, 8, 13, 15, 18, 19, 20, 21, 22, 27, 29, 30, 34, 61, 62, 70, 108, 183, 363-64 n3, 392 n97
daughter-in-law: Marion Clara Doyle, 286, 319, 407 n107
decendants: Edna P.G., 346, 347; Eveline J.G. Brown, 346; Evelyn D.G. Brown, 251, 400 n79; Jemima J.H. Brown, 251, 346, 400 n77; Margaret P. Doyle, Janet E., Frances L., 326, 347
grandfather: Peter Walker, 5, 9, 19
grandmother: Elizabeth G., 5, 19
great-grandsons: Owen S.G., 326, 347, 409 n53; Tom S.G. Brown ("boy"), 229, 253, 295, 346, 409 n53
great-grandfather: Henry G., 139
great-grandmother: Jane Hippie, 324
mother, Mary Walker: in England, 1, 2, 3; in Australia, 5; in Brisbane, 8, 13, 15, 18, 19, 20, 21, 22, 27, 29, 30, 34, 61, 62, 70, 108, 183, 363-64 n3, 392 n97
family [see also Thomson]
aunts: Julie Cunliff, 19, 21; Jane Walker, 19; Lydia Walker, 3, 386-87 n74
brother, elder: Edward, 1, 2, 13, 14, 15, 18, 20, 21, 22, 29, 35, 92-93, 108, 285, 384 n24, 396 n2
brothers, younger: Curwen Harry, 5, 28, 30
brothers-in-law: W.B. Dixon, 29, 106
niece, 35
sister, elder: Mary, 1, 2, 4, 13, 20, 25, 35, 51, 52, 108, 320, 361
sisters, younger: Aucée, Jess, Lydia, Priscilla, 1, 2, 11, 13, 20, 25, 29, 61, 108, 183, 251, 365 n37, 369 n54, 392 n97, 400 n77, n79
sons-in-law: Thomas H. Brown, 217, 250, 251, 347, 396 n3, 400 n77; George Doyle, 286, 319, 404 n107
uncles: Bailey G., 19; William G., 18-19; John Walker, 19
Grimes, J.W., 38
Groom, L., 356
Groom, W.H., 86, 88-89, 244
Groshanig v. Vaughan and others [shearer leaving work], 1890, QLJ, IV, 50:179
Guiana, British, 323
Guiness, H., 118
Guyane, 130
Gympie, 60, 75, 117. See also Scottish Gympie Gold Mine Ltds case
Hackett, J.W., 191, 199
Hagenauer, F.A., 115
Haldane, Viscount, 294
Hall, E.R., 411 n104
Hall, T.S., 94-95, 152, 153, 358
Hall, Mrs T.S., 153
Hall and others v. Gorrie [mining], 1888, 3 QLJ, 113:151-52
Hall v. Hall [desertion], 1917, 22 CLR, 476:341
Halsbury, Lord, 268, 269
"Hambledon", plantation, 102
Hambledon, plantation, 102
"Hamburg", 328, 329
Hamilton, J., 64, 69
Hamilton, Lady George, 141
Handy, J.K., 24, 368 n38, 370 n72
Hardie, Dr, 356
Harding, G.R., 26, 36, 37, 47, 48-49, 51, 68, 73, 75, 77, 94, 95, 120, 121, 152, 168, 178, 182, 222, 223, 225, 226, 227, 237, 239, 373 n76, 397 n17, n22, 399 n60
Hardings case, 9 QLJ, 137:234, 235
"Harlaxton", Toowoomba, 395 n73
Harlin, T., 180
Harrow, school, 158
Haslam Engineering Company, 63-65
Hawk, 4
Hawkesbury River, 109, 194, 393 n27
Refuge Bay, 194, 393 n27
The "Basin": 194
Hawthorne, S., 13, 27
Headington Hill, 48
Heal, J. 51. See also Regina v. Heal
Health, 2, 18, 117, 167, 253, 254, 407 n75. See also SWG, health
leprosy, 149
SWG policy, 117
Healy, P., 14, 15, 366 n67, 368 n34
Heath, 98
Hedderwich and others v. Federal Commissioner of Land Tax [taxation], 1913, 16 CLR, 27:310
Hegarty, Mr, 30
Helidon, 221
Heldon
Helidon Spa Water Company v. Campbell [trade mark], 1900, 10 QLJ, 1:221, 397 n10
Hely, H., 25, 27
Hemmant, W., 31, 41, 43, 63-64, 69, 111, 323, 370 n82, n83, 386-87 n74
Henderson, Mr, 232-33
Heralds, College of, 139. See also honours
Herbert, R.G.W., 12, 71, 145, 158
Herberton, 111, 1872
Herbert River
“Cordelia Vale”, plantation, 100
Farmers Association, 95
Herodotus, author Egypt, 9
Herschel, J.F.W., author Astronomy, 11, 365 n57
Hesketh, Lt S.B., 146-47
Heydon, C.G., 288
"Heyfield", station, 235, 236
Hickey, S. See Douglas J.
Higgins, son, 348
Higinbotham, G., 386 n63
Hill, C., 233
Hinchcliffe, A., 147, 162, 388 n11, n12
Hirst, solicitors, 26
history, 8, 9, 186, 202, 207
Hobart, 124, 128, 134, 145, 153, 154, 188, 207, 252, 253, 262, 264, 266, 319, 322, 326, 334, 344, 351, 394 n49
Mercury, 318
Mt Nelson, 319
South Bruni lighthouse, 344
Hobbs, Dr, 40, 369 n68
Hocking and others v. Western Australian Bank [mining partnership], 1909, 9 CLR, 738:315
Hockings, A.J., 46, 59
Hodgkinson, W.O., 95, 163, 175, 387 n1
Hoey, L., 100
Hoffnung and Co., 102
Holder, F., 255
holidays, 123, 319. See also travel
Holland, 100, 125, 198
Holland, Sir Henry. See Lord Knutsford
Holmes, O.W., 214
homes, 84
Hong Kong, 44, 102, 221
honours (British), 136, 139, 141, 320, 350, 382 n98, 384 n18, 401 n14. See also Jerusalem, Order of
Order of St Michael and St George (KCMG, GCMG), 141, 320, 400 n68
Privy Councillor (PC), 322, 396 n97, 401 n14
Hoolan, J., 160
Hope, L., 37. See also Noagues v. Hope
Hopeful, 96, 98-99, 155, 229, 350. See also “Messiah”
Hopetoun, 7th Earl of. See governors-general
Horace, author Epistles, 9 De Arte Poetica, 9
Hornbrook v. Hyne (Pacific Islanders), 1897, 8 QLJ, 17:237
Horniman's school, 5
Hoskins, Sir Anthony, 147
hospitals, 97, 117, 118, 277, 309, 313 (see also health):
Aramac, 116; Brisbane, 90, 92, 118; Clermont, 116; London [St George’s], 18; Mackay, 96, 113; Maitland, 8, 92; Ravenswood, 113; Sydney [St Vincents], 295
House of Representatives. See Parliament, federal
Houses of Commons, Lords. See British government
Huddart Parker and Co. Pty Ltd v. Moorehead [constitutional], 1908, 8 CLR, 330:290
Hughenden, 84, 163, 168, 227
Hughes, W.M., 293, 348, 351, 352, 354, 355, 357, 358, 360. See also attorney-general
Hunter River, 5
Hutchinson, A., G. and K., 49-50. See also Miskin v. Hutchinson
Hutton, G.S., 399 n61
Hynes v. Byrne and others [The New Zealand Loan and Mercantile Agency Company], [contract], 1899, 9 QLJ, 154:220-21
Ibbotson and Co., 64
Imbil, 243
imperialism (see also France, Germany)
British, 1, 125, 130, 132, 134, 138, 139, 141, 145, 150, 155-56, 159, 188, 196, 269, 271, 323, 331, 335, 349, 350, 351-52, 382 n98, 386 n59
Imperial Federation League, 141, 156
Imperial Institute, 156
Incorporated Law Institute and Meagher (misconduct solicitor), 1909, 9 CLR, 655:317-18
Independents. See Congregationalists
India, 177, 183, 217, 221, 291, 323
labourers, 93, 95, 102, 105, 172, 375 n33
migration, 93, 198
Museum, London, 324
Mutiny Relief Fund, 8
Ocean, 348
Ingham, 100, 102
Ingham v. Hie Lie [definition factory], 1912, 15 CLR, 367:299
insanity, SWG policy, 117-18
Insipk Point, 322
insurance, 37, 40, 327, 343. See also Palmer case
Inter-State Commission, 327
Inverness, 324
Inverness-Shire, s.s., 344-45. See also Cartel’s case
Ipswich, 3, 4-5, 8, 13, 26, 27, 31, 34, 50, 131, 152, 221
Brisbane Street, 4
circuit court, 24, 34, 52, 240, 244-45
Grammar, School, 12-13, 14, 27, 58
Ladies’ Christian Association, 116
Licensing Board, 152
Limestone Street, 4
West Moreton Workers’ Political Organisation, 169
Ireland, 104, 122, 150, 166, 228
Republican Brotherhood [Sinn Fein], 354-55, 360
Irving Bank, 114
Irving, H., 71
331, 332, 333, 334, 335, 336, 337, 338, 340, 341, 342, 344, 345, 346, 355, 356, 357. See also attorney-general
Isaacs, Mrs, 319
Isambert, J.B.L., 86
Isley, Inspector, J.B., 114
Italy, 16, 17, 18, 84, 280. See also languages
Calabria, 103
sugar labourers from, 103, 377 n72

Jack v. Small and another (insolvency), 1905, 2 CLR, 684:280-81
Jacobs and another v. ship Vanguard (admiralty, collision), 1884, QLJ, 11, 28:120
Jamaica, 323
James, J.A., 3
James, V.C., 302
Japan: Tsukuba, ship, 62; labourers from, 103, 198
Jay, William, 3
JekyU, J., 123
Jenkins, G.H., 207
Jennings, P., 125, 135
Jennings, Rev., 72
Jerusalem, Order of, Lady of Grace of St John, 320
Jervois, Col. W.F.D., 131
Jimbour, 217
"Jimmy", Aboriginal, 50. See also R. v. Jimmy
Jodnell, R.N., 394 n63
Johansen v. City Mutual Life Assurance Society Ltd [appeals policy], 1904, 2 CLR, 186:284
Johnson, S., 228-31
Johnstone Division Board, 114
Johnston, Rev., 19
Jondaryan, 151
Jones, A.H., 239
Jones, A.H., in re [admission], 1896, 7 QLJ, 1:239. See also Weedon's case
Jones, David, 3, 4, 5
Jones, J.G., 12, 26, 367 n17
Jones, S., 286
Jordan, H., 142
journalism, of SWG, 11-12, 30
"Juanbung", station, 235, 236
Jumna, 388 n6
justices, chief
1899–1900 campaign of, 210-11, 213, 214-15
New South Wales. See also Darley
Queensland. See Cockle, Lilley
SWG: Queensland, 181, 183-84, 216-56; federal, 183, 245, 255-362; South Australia (see Way); Victoria (see Madden)

Kalibia, s.s. v. Wilson (seaman's compensation), 1910, 11 CLR, 689:291
Kate, government steamer, 46, 62, 65, 90, 109
Kate, maid, 34
Kates, F.B., 86
Katoomba, 324
Kean, Mrs, 10
Kebbell, Dr W., 225, 397 n16, 400-401 n79
“Keelah”, Aboriginal, 53
Keith, A.B., author Imperial Unity and the Dominions, 350
Kelly, E. [Ned], 228, 229, 230
Kennedy, A. See governors
Kenniff, J., P., T., 228-32. See also R. v. Kenniff
Kent, S.C., 63
Kerferd, G.B., 124
Kermode, in re [divorce], 1876, QSCR, IV, 211:51, 371 n13
Khartoum, 132
Kikori River, 145
Kilkivan, 111
Killarney, 111
Kimberley, 1st Earl of, 71
King, G., 64
King, H.E., 43, 370 n84
Kingsbury, J.J., 161
Kingsley, C., author Ravenshoe, 14; Westward Ho. 24, 367 n7
Kingston, C.C., 188, 195, 197, 198, 200, 201, 209, 211, 212, 255, 256, 259
Kinnaird, 10th Baron, 70
Kinross, 70
Kirk v. Commissioner for Railways [negligence], 1876, QSCR, IV, 160:50
Kitchener, Lord, 348
Kitt, B., 155
Knowles, G.S., 355
Knox, A., 332, 357, 360
Knutsford, 1st Viscount (Sir Henry Holland), 138, 141, 145, 155-56, 174, 323
Knutsford, Lady, 141
Krygger v. Williams [military training and religion], 1912, 15 CLR, 366:295
labour (Labor). See also class and employment, unions
Australian Labour Federation, 151, 160, 162, 169, 388 n11
Eight Hours Demonstration Committee, 123
government labour bureau, 169
movement, 123-24, 144, 147, 150-51, 160, 161, 167, 176, 388 n2
SWG reforms, 151, 167, 353, 356, 358
Workers' Political Association, 169
Lachlan River, 235
_La Dame aux Camelias_, 16
_Lady Audley's Secret_, 24
“Lake Dunn”, station, 338, 339
Lakes District, England, 16, 19, 324
“Lalla Rookh”, station, 114
Lakes District, England, 16, 19, 324
“Lalla Rookh”, station, 114
Lamington, 2nd Baron. See governors Lamington, Lady M., 246, 323, 400 n66, 407 n79
La Nauze, J.A., author _The Making of the Australian Constitution_, 185, 188, 194, 208, 259, 393 n1
Commissioner, 28
See also Quarrell’s case
grant—railways, 64, 84-85, 93, 110, 169
Land Board, 227, 228
orders, 103
reform, 46
selectors, 47-48, 58
State Rivers and Water Supply Commission, 342. See also Winfield’s case
succession, 57
Torrens system, 38
Victorian Lands Purchase and Management Board, 342

_Landseer, E., 12, 17
Lane, W., 150, 161, 358, 388 n2, author _The Workingman’s Paradise_, 388 n2; New Australia, 358

Lang, C., 100-101
languages: English, 8, 29, 196, 197, 201, 241; French, 8, 15, 28, 239, 288, 367 n7; German, 8; Greek, 8, 9, 10, 12, 16, 239; Italian, 15, 16, 350, 399 n59; Latin, 8, 9, 10, 11, 12, 28, 29, 239; Smith’s Latin Dictionary, 8
Lacooen group, statue, 17
Latin. See languages
Laughan Islands, 97-98
Laura, 92
_Lavinia_, 367 n38
law (see also courts; education, legal; punishment)
institutions: Association, Queensland, 239; Board of Examiners, Supreme Court, Queensland, 23; Book Company, Sydney, 361; Incorporated Society, London, 141; Inner Temple, London, 12, 156; Lincoln’s Inn, London, 141; Middle Temple, London, 323; Society of, Queensland, 26
justices of the peace, 92
practitioners: barristers and solicitors, comparison, British, 64, 71, 122, 140, 322, 323, 351-52; practice, 152, 182, 217, 219, 253, 277-78; 303-4, 357; ranking of, 13, 22, 24, 25, 26, 32-33, 47, 239-40, 296
Queen’s counsel, SWG, 47
reform, by SWG, 31, 32, 52; Criminal Code, 118-19, 123, 219, 230, 239, 245, 397 n6
reports: _Queensland Law Journal (QLJ)_ 217, 296 n3; _Queensland State Reports (QSR)_ 217, 396 n3; SWG Notebooks, 217-18, 396-97 n3, 397 n8
rule of, 30, 54, 113, 179, 219, 225, 245, 278, 312, 336, 353, 362
Lawes, J.B., 105
Lean, Miss, 324
Lee Steere, J.G., 190, 382 n96
legislation

Victoria: 1890 Factories' bill, 124; 1890 No. 1111, Licensing Act, 281; 1890 No. 1116, Married Women's Property Act, 281; 1890 No. 1149, Transfer of Land Act, 308; 1895 No. 1374, 1896 No. 1467, Income Tax Acts, 310; 1900 No. 1721, Public Service Act, 274; 1905 No. 1975, Factories and Shops Act, 299

Western Australia: 1904 No. 15, Mining Act, 314-15

Le Havre, Normandy, 16
Le Hunte, G.R., 249, 250
le Sueur, Eustace, 17
Lethbridge's Pocket, 228, 231
Levy formerly called Wardmassay v. Wardmassay (nullity), 1903, SCT/AL, 95-96, 117:223
Lewis, N., 207
Lewis v. Lewis (interstate writs), 1902, QSR, 115:238-39
Lewis v. R. and another (customs duties), 1912, 14 CLR, 183:316
Liberal Association, 46, 78, 160
liberalism, 124, 167, 176, 362
Liberal party: federal, 323, 349;
Queensland, 31, 41, 45-46; 54, 64, 65, 72, 73, 78, 86-87, 88-89, 93, 94, 110-11, 115, 117, 143, 148, 150, 158, 370 n82, 371 n98, n99, 374, 374 n102, 375 n4; Welsh, 323
Libraries: Dixson (Sydney), 361; Maitland, 8; Mitchell (Sydney), 361; Public (Brisbane), 286; School of Arts (Brisbane), 27; SWG, 24, 25, 84, 262-63, 266
Lilithgowshire, 104
Lilley, C. as barrister, 23, 25, 30, 33, 36, 37, 38, 367 n2; in politics, 15, 31, 40, 41, 54, 369-70 n71, 370 n72, n74; as judge, 48-50, 58, 68; as chief justice, 73, 77, 120, 121, 122, 152, 178-80, 181-83, 217, 226, 369 n47, 373 n75, 391 n78, 392 n90
Lilley, E.M., 178-79, 181, 182, 229, 231, 369 n47
Lilley v. Parkinson and others (libel), 1871, QSCR, 11, 159:33, 369 n48
Lindsay, J. and M., 323-24
Lissadell, 233
Literary Circle, Brisbane, 180
Little, barrister, 35
Liverpool, 142
Livy, 9
Llantrisant, 140
Llewellyn, Prince of Wales, 140
Lloyd, Mr, 62
Lloyd v. Wallace (trading with enemy), 1915, 20 CLR, 229-328
Loch, Sir Henry: See governors
Logan, 111
London, 3, 15, 16, 19, 63, 64, 65, 69, 70-71, 72, 76, 85, 88, 110, 111, 125, 129, 130, 134, 136, 138, 139, 142, 153, 172, 173, 174, 175, 176, 185, 200, 209, 211, 212, 213, 238, 268, 293, 320, 351, 352, 360. See also art, churches, hospitals, law
arsenal: Woolwich, 18, 324
civic: Lord Mayor's banquet, 70, 141;
Mansion House, 70, 141, 323
clubs: City Liberal, 71; St George's, 141
guilds: Clothmakers, 141; Fishmongers, 70-71, 141; Grocers and Drapers, 141; Ironmongers, 141
museums: Madame Tussaud's, 324;
Victoria and Albert, 324
newspapers: Pall Mall Gazette, 156;
The Times, 173
palace, Buckingham, 322
societies: Chamber of Commerce, 141;
Institute of Civil Engineers, 141;
Merchant Taylors' Company, 141;
Missionary Society, 5; Royal Geographic Society, 141; Royal Society, 71
suburbs and districts: Covent Garden, 324; Epsom, 324; Half-Moon Street, 324; Hampstead Heath, 324; Mayfair, 324; St Albans, 20; Tilbury, 322, 325
Longfellown, H.W., 399 n59
Long Innes, J.G., 24
Longreach, 170
Long v. Rawlins (assault), 1874, QSCR, IV, 86:50
Index 445

Lord's Day Observance Society. See Christianity
Loreburn, Lord, 272
Louisiades, 126, 127
Low, J., 30-31, 368 n34
Lucerne, 324
Lucinda. government steamer, 109, 144, 156, 160, 165, 166, 167, 169, 170, 190, 194, 195, 196, 201, 204, 253, 378 n88, 393 n27
Lukin, G.L., 149-50
Lutherans, 115
Lutwyche, A.J.P., 12, 23, 24, 33, 38, 46, 48, 73
Lyndhurst, 324
Lyne, W., 215, 256, 259
Lyons, 16
Lyons v. Smart (prohibited imports), 1908, 6 CLR, 143:282
Lukin, G.L., 149-50
Lutherans, 115
Lutwyche, A.J.P., 12, 23, 24, 33, 38, 46, 48, 73
Lyndhurst, 324
Lyne, W., 215, 256, 259
Lyons, 16
Lyons v. Smart (prohibited imports), 1908, 6 CLR, 143:282
Macalister, A., 12, 13, 16, 23, 30, 31, 40, 41, 42, 43, 54, 58, 63, 72, 88, 370 n77, 386-87 n74
family, 19
son, Willie, 18
McBride and Co. v. Council of the Municipality of Brisbane (opening of bridge), 1885, QLJ, 11, 73:119
McCawley, T.W., 336
McCawley v. R. and others (constitutional), 1918, 26 CLR, 9:336
McCulloch v. Maryland (constitutional), 1819, United States Supreme Court, 142, 266, 291, 292
McDermott, P.J., 371 n91
MacDevitt, E.G., 24, 25, 41, 52, 53, 370 n72, n75, n78, 371 n17
McDonald, A.R., 101
Macdonald-Paterson, T., 87, 142, 145, 175, 188, 190
McEachern, D. See also McIlwraith, T.
McEachern, Ela, 324
McEachern, Lady, 287
McGrath, W.J., 229, 230
MacGregor, P.B., 354
MacGregor, W., 125, 128, 129, 138, 154-55, 158, 177, 242, 245, 249, 250, 301, 320, 322, 360, 391 n76
McIlwraith, A., 324
McIlwraith, McEachern and Co., 64-65, 68-69, 324
McIntyre, William, 5, 8, 9, 28
School, Maitland, 8, 9
MacKay, 90, 97, 100, 101, 102, 103, 104, 105, 132, 133
Eton, 95
Kanaka hospital, 96
Racecourse Central Sugar Mill, 287
Sugar Co. Ltd., 170
MacKenzie, in re (insolvency), 1895, 6 QLJ, 250:226-27
MacKenzie River, 25
MacKenzie and others v. Frackleton (church jurisdiction), 1909, 8 CLR, 673:311
Macrossan, J.M., 64, 85, 106, 173, 175, 183, 185-86, 191, 192, 196, 391 n68, 392 n97, 393 n7
Madden, J., 206, 257, 267, 274, 279, 284-85, 287, 303, 304, 313, 338, 395 n64, n85
Mahdi, the 132
Mahoney and another v. Hosken (registration of land title), 1912, 14 CLR, 379:308
Maitland, 4, 5-9, 19, 28, 29, 30, 31, 33, 34, 61, 182, 292. See also Congregationalists, flood, hospitals, McIntyre's school, Presbyterians
Church Street, 5
East, 5
High Street, 5
Mercury, 8, 9
School of Arts, 8
South, 288
West, 5
Malays, 102, 361
Malaya Island, 243
Malcolm's case. See Australian Steamships
Manchester, 19, 103
Maneroo, station, 163
Mansfield, A.J., 397 n6
Mansfield, E., 182
Maoris. See New Zealand
Marconi, 310-11. See also wireless telegraphy
Index

Marconi's Wireless Telegraphy Company Ltd v. Commonwealth (defence), 1912, 15 CLR, 685:311
Margaret and Jane, 53
Marie Antoinette, Queen, 345
Marks, C.F., 84
Marryat, F., author Peter Simple, 14
Marseilles, 16
Marshall and another v. Colonial Bank of Australasia Ltd (banking), 1904, 1 CLR, 632:279-80
Marshall, C.J., United States of America, 266, 270, 271, 291
Marslands' costs, in re, Marslands v. New Dawn Freehold Gold Mining Co. (practice), 1890, 4 QLJ, 3:152
Marx, K., author Das Kapital, 150
Marx, Lt Commander, 98
Maryborough, 59, 60, 75, 100, 101, 118, 131, 148, 322
circuit court, 24, 26, 34, 35, 53, 217, 240, 242-43
grammar school, 240
Wide Bay and Burnett Farmers' and Planters' Association, 73
Masons, See Freemasons
Massachusetts, 124
Massys, Q., 17
mathematics, 8, 9, 10, 348, 409 n58. See also Mercer, R.E.
Meagher, R.D., 317-18, 407 n70
Mediterranean, 322, 352
meat preserving, 40, 306-7
Meat Preserving Company Ltd, Central Queensland v. Bury and another (insolvency), 1876, QSCR, IV, 168:50, 371 n2. See also Miles v. Sydney Meat...
Meillon, J., 10
Mein, C.S., 9, 26, 27, 28, 29, 31, 34-35, 43, 44, 45, 59, 62, 68, 95, 121, 135, 183, 365 n50, 367 n18, 386-87 n74, 392 n97
Mein, A.T., [wife], 392 n97
Botanical Gardens, 285
Centennial Exhibition, 92
Chamber of Commerce, 57
City Council, 336
Club, 63
Flemington Racecourse, 257
Free Library, 15, 16, 62
Government House, 63
High Court sittings, 257, 258, 261, 262, 263, 264, 265, 266, 267, 269, 298, 300
ice-skating rink, 304-5: Menzies Hotel, 326, 347
newspapers: Age, 310, 312-13; Argus, 290, 312-13; Herald, 312-13
Parliament House, 15, 207, 322
Portsea, 63
Menzies v. Deshon (property), 1883, QLJ, 1, 154:75
Mercer, R.E., 409 n58
merchant seamen, 333
Merchant Seamen's case (conciliation and arbitration), 1914, 18 CLR, 273:333, n20, 408
Merrie England, 177
Merry, T.F., 37-38
Merry v. Australian Mutual Provident Society [land], 1872, QSCR, 111, 36, 40, 86:37-38, 369 n66
Mersey, Lord, 302
Merthyr Tydfil, 1, 8, 19, 139, 324. See also homes, "Merthyr"
Castle Hotel, 19
Cyartha iron works, 19
Glebeland, 324
Guardian, 1
Mesopotamia, 348
"Messiah", West Indian, Crown witness in "Hopeful" case, 229
Meston, A., 86, 374 n101
Meyenberg v. Pattison and others (mining), 1889, 3 QLJ, 184:152
Midge, 287
Migration [see also Chinese, India, Japan] emigration, 3, 21, 68
federal power, 198
immigration, 31, 71, 76, 103-5, 111, 116, 186; Immigration Department, 90, 99; White Australia, 282-83, 317, 335, 350
Milan, 16, 324
Campo Santo, 324
Miles, W., 37, 44, 45, 60, 65, 68, 71, 72, 74, 88, 99, 111, 142, 371 n89
Miles v. McIlwraith [contractors with government], 1880, QLJ, 1, 27:65, 68-69
Miles v. Sydney Meat Preserving Co. Ltd and others [meat industry], 1912, 16 CLR, 50:306-7
military [see also defence] ambulance corps, 298
Austro-Prussian war, 18
compulsory training, 295
First World War, 327-30, 335, 347-48, 349-50, 352, 354, 355
Italian, 17
Royal Commission on Recruiting and Reinforcements for Australian Imperial force, 354
volunteers, 11, 131, 135
Millchester, 59
Mills, Sir Charles, 141
Milman, H., 129, 376 n53
Milton, J., author Comus, 10
mining, 43, 54, 56, 93, 94, 142, 152, 165,
Index 447

221-22, 238, 276, 299, 344, 407 n75. See also gold
Australian Miners Association, 149
coil, 94, 288, 292-93, 315
copper, 37, 47
Cornish subsist, 167
Miners' Association, 148
Secretary of Mines, 88, 344

Mishkin v. Hutchinson [dummying], 1878, QSCR, V, 82 and 85:49-50

Mitchell, 229
Mobilau, 217
Molesworth, R., 222
Molong. See "Cardington Hall"
Montesquieu, author The Spirit of Laws, 65
Mooney v. Commissioner of Taxation [taxation], 3 CLR, 221:276
Moore, T., author Irish Melodies, 10
Moore, W., 207
Moorehead v. Melbourne Steamship Co. (vend; power to require answers; technical points), 1912, 15 CLR, 333:293, 350
Moran, P.F., Cardinal, 192
Moree, 265
Morehead, B.D., 62, 64, 72, 150, 159, 185, 386 n61
Moresby, Capt. J., 36
Moreton Bay, 4, 27, 28, 46, 62, 109, 169, 217, 254, 286, 320
Amity Point, 62
Bribie Head, 62
Caloundra Point, 62
Dunwich, 62
Flat Rock, 62
Peel Island, 62
Redcliffe, 286
Stradbroke Island, 62
Moreton, B.B., 95, 113, 144, 161, 377 n61
Morey, E., 149
Morgan, A., 244
Morgan, F., 94-95, 152, 153
Mount Morgan, 94-95, 119, 151-52, 153, 158, 183, 222, 246, 314, 348. See also mining cases: Osborne and others v. Morgan; R. v. Cribb; Williams v. Morgan; Hall and others v. Gorrie; Meyenberg v. Pattison
Morgan, Mr, 286
Morgan, O., 139
Morganw, 139
Morrice, John, in re [admission solicitor], 1885, Q LJ, 11, 69:121-22
Morrison, W.E., 376 n38

Moss v. Donohue (trading with enemy), 1915, 20 CLR, 615:329
Moss and Phillips v. Donohue [trading with enemy], 1915, 20 CLR, 580:328-29
Mount Clara Copper Mining Company, 47
Mount Clara Copper Mining Co. Ltd, in re (insolvency), 1875, QSCR, IV, 112:47
Mount Cotton, 168

Mount Etna, Sicily, 16
Mount Morgan. See Morgan, F.
Mount Morris, 179
Mount Victoria, 233
Mowbray, Rev. T., 367 n2
"Muckie", Aboriginal, 241
Mulgrave Agriculture and Protection Society, 103
Mulholland, B.E., 234
Mulholland v. Doneley and Queensland Trustees [probate], 1899, 9 Q LJ, 260:234. See also Tyson, J.
municipal government, 31
Munro, J., 56, 372 n34
Munro, J., 190, 192, 195
Murphy v. Chandler and others (practice), 1885, QLJ, 11, 64:121
Murray, C.E.R., 10, 14, 402 n30
Murray, Dr, 71
Murray, solicitor, 25, 367 n13
Murrurundi, 8, 34
Musgrave, 241
Musgrave, Sir Anthony [see also governors]
Musgrave, Lady J.L. (wife) [JLM], 142, 156-58, 167-68, 173, 177, 181, 183, 184, 203, 204, 217, 295, 320, 323, 348, 392 n90, n97, 396 n1, 407 n79
Musgrave, children, 156, 158, 348
music: Aida, 324; ballet, 63; Caruso, 324; concerts, 108; "Dead March" in Saul, 11; opera, 61; piano, 29; singing, 20
Mutual Life Assurance Company, 25, 108, 180
Mutual Life of Citizens' Association (MLC), 361
Mutual Provident, 25

Naples, 16, 322, 325
Napoleon, 358
Nationalist party [Queensland], 54, 86-87, 88, 89, 93, 94, 148, 150, 181, 374 n102.
See also McIlwraith, T.
Nautilus, 170
navy. See defence

Neighbour v. Moore and another (shearer leaving work), 1892, Q LJ, IV, 145:179-80
Nelson, 135, 138
Nelson, H.M., 174, 184, 246, 249
Nerang, 144
Nevill, R., 288
New Caledonia, 57, 90, 125, 129-30, 151, 381-82 n90, n92, n94
Newcastle, 288, 292-93, 389 n35

New Guinea, 73, 89-90, 96, 98, 99, 100, 113, 125-25, 130, 131, 135, 138, 145, 154, 156, 158, 177, 245, 249-50, 286, 371 n18, 381 n75, n77, n78
<table>
<thead>
<tr>
<th>Amazon Bay</th>
<th>177</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aroma</td>
<td>177</td>
</tr>
<tr>
<td>Dobu</td>
<td>177</td>
</tr>
<tr>
<td>Duau</td>
<td>177</td>
</tr>
<tr>
<td>East Cape</td>
<td>177</td>
</tr>
<tr>
<td>Hula</td>
<td>177</td>
</tr>
<tr>
<td>Kapa Kapa</td>
<td>177</td>
</tr>
<tr>
<td>Port Moresby</td>
<td>126, 128, 155, 177</td>
</tr>
<tr>
<td>Samarai</td>
<td>177</td>
</tr>
<tr>
<td>Yule Island</td>
<td>177</td>
</tr>
<tr>
<td>New Hebrides</td>
<td>90, 96, 125, 126, 129, 130-31, 136, 138, 141, 145, 176</td>
</tr>
<tr>
<td>Santa Cruz Island</td>
<td>172</td>
</tr>
<tr>
<td>Tongoa Island</td>
<td>172</td>
</tr>
<tr>
<td>New South Wales</td>
<td>see also courts</td>
</tr>
<tr>
<td>Chinese legislation</td>
<td>55</td>
</tr>
<tr>
<td>criminal absconder</td>
<td>57</td>
</tr>
<tr>
<td>defence policy</td>
<td>132, 138</td>
</tr>
<tr>
<td>Federal Council</td>
<td>124-25, 153</td>
</tr>
<tr>
<td>federation and</td>
<td>90, 153-54, 185-86, 188, 198, 199, 200, 202, 206, 207, 208, 209</td>
</tr>
<tr>
<td>Legislative Assembly</td>
<td>340</td>
</tr>
<tr>
<td>Pacific policy</td>
<td>89-90, 126, 127, 129</td>
</tr>
<tr>
<td>renaming of</td>
<td>145, 384-85 n33</td>
</tr>
<tr>
<td>Newton v. Brown</td>
<td>fixtures, 1872, QSCR, 111, 90:38, 369 n67</td>
</tr>
<tr>
<td>New York</td>
<td>142, 181, 286, 291</td>
</tr>
<tr>
<td>New Zealand</td>
<td>90, 119, 124, 125, 126, 134, 199, 204, 209, 323, 352</td>
</tr>
<tr>
<td>Maoris</td>
<td>196</td>
</tr>
<tr>
<td>New Zealand Loan and Mercantile Agency Co. v. H. and J. Howes</td>
<td>contract, 1888, QLJ, IV, 73:120</td>
</tr>
<tr>
<td>Niagara Falls</td>
<td>142</td>
</tr>
<tr>
<td>Nice</td>
<td>16</td>
</tr>
<tr>
<td>Niebuhr, B.G.</td>
<td>11</td>
</tr>
<tr>
<td>Nile</td>
<td>3</td>
</tr>
<tr>
<td>Noagues, V.</td>
<td>37</td>
</tr>
<tr>
<td>Noagues v. Hope</td>
<td>sugar, 1874, QSCR, IV, 57:37</td>
</tr>
<tr>
<td>Nolan v. Clifford</td>
<td>constable's power of arrest, 1904, 1 CLR, 429:279</td>
</tr>
<tr>
<td>Nonconformists</td>
<td>5, 58, 62, 72, 141</td>
</tr>
<tr>
<td>Nord Austrakische Zeitung</td>
<td>86</td>
</tr>
<tr>
<td>Norman, Sir Henry</td>
<td>see also governors</td>
</tr>
<tr>
<td>Norman, Lady A.</td>
<td>177, 323, 392 n97, 400 n77</td>
</tr>
<tr>
<td>Normanby Copper Mining Company</td>
<td>47</td>
</tr>
<tr>
<td>Normanby Copper Mining Co. Ltd, in re</td>
<td>insolvency, 1876, QSCR, IV, 223:47</td>
</tr>
<tr>
<td>Normanby Copper Mining Co. Ltd v. Corfield and others</td>
<td>insolvency, 1878, QSCR, V, 113:47</td>
</tr>
<tr>
<td>Normanby Island</td>
<td>98</td>
</tr>
<tr>
<td>Normanby Island</td>
<td>98</td>
</tr>
<tr>
<td>Normanby Island</td>
<td>98</td>
</tr>
<tr>
<td>Normanton</td>
<td>111, 113, 217</td>
</tr>
<tr>
<td>circuit court</td>
<td>240-41</td>
</tr>
<tr>
<td>Northcote, 1st Baron</td>
<td>see also governors-general</td>
</tr>
<tr>
<td>Northcote, Lady Alice</td>
<td>288, 323, 404 n115, 1116</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>See South Australia</td>
</tr>
<tr>
<td>Novar, Lord</td>
<td>See Ferguson R.; governors-general</td>
</tr>
<tr>
<td>Oban</td>
<td>324</td>
</tr>
<tr>
<td>O'Connor, Janet</td>
<td>181</td>
</tr>
<tr>
<td>O'Doherty, K.I.</td>
<td>59</td>
</tr>
<tr>
<td>Ogden</td>
<td>142</td>
</tr>
<tr>
<td>Ontario</td>
<td>142</td>
</tr>
<tr>
<td>opium</td>
<td>291</td>
</tr>
<tr>
<td>Opposition (political): SWG in</td>
<td>46, 63-65, 73, 89-90, 131, 150-51, 153, 154, 158, 159, 180, 185, 186. See also McLlwraith, T.</td>
</tr>
<tr>
<td>Orama</td>
<td>322</td>
</tr>
<tr>
<td>Orange</td>
<td>See &quot;Winnivy&quot;</td>
</tr>
<tr>
<td>Oriel</td>
<td>98</td>
</tr>
<tr>
<td>Ormiston</td>
<td>37</td>
</tr>
<tr>
<td>orphans</td>
<td>21, 117</td>
</tr>
<tr>
<td>Ortigia</td>
<td>17</td>
</tr>
<tr>
<td>Orvieto</td>
<td>325</td>
</tr>
<tr>
<td>Osborne and others v. Morgan and two others; Osborne v. Morgan; Martin and others v. Morgan and others</td>
<td>mining, 1886, QLJ, 11, 113:94</td>
</tr>
<tr>
<td>Osborne v. Commonwealth and McKay</td>
<td>constitutional, 1911, 12 CLR, 321:292</td>
</tr>
<tr>
<td>Otter, 133, 135, 160, 322</td>
<td></td>
</tr>
<tr>
<td>outlawry</td>
<td>353-54</td>
</tr>
<tr>
<td>Outtrim v. Webb</td>
<td>constitutional, 1906, 4 CLR, 356, 1907 AC, 81:268, 269</td>
</tr>
<tr>
<td>Overland Telegraph Company</td>
<td>133</td>
</tr>
<tr>
<td>Owen Stanleys</td>
<td>129</td>
</tr>
<tr>
<td>Oxford</td>
<td>see also universities</td>
</tr>
<tr>
<td>English Dictionary</td>
<td>71</td>
</tr>
<tr>
<td>Pacific</td>
<td>73, 89-90, 93, 126, 129, 130, 151, 186, 308, 348</td>
</tr>
<tr>
<td>islanders</td>
<td>36, 46, 53-54, 72-73, 95-102, 105, 111, 113, 148, 170-73, 174, 178, 237, 243, 282, 376 n38, 340, n46, n55, n57, 390 n58 see also legislation</td>
</tr>
<tr>
<td>Monroe doctrine</td>
<td>90</td>
</tr>
<tr>
<td>Western Pacific High Commission</td>
<td>97-98</td>
</tr>
<tr>
<td>Western Pacific Order-in-Council</td>
<td>127, 128</td>
</tr>
<tr>
<td>Packer, Burrell and Smart and another v. Peacock</td>
<td>contempt of court, 1912, 13 CLR, 577:312-13</td>
</tr>
<tr>
<td>Palermo</td>
<td>17</td>
</tr>
<tr>
<td>Palm Island</td>
<td>50</td>
</tr>
<tr>
<td>Challenger Bay</td>
<td>50</td>
</tr>
<tr>
<td>Palmer, A.H.</td>
<td>31, 37, 40, 43, 45, 46, 54, 86, 93, 161, 181</td>
</tr>
</tbody>
</table>
Index 449

Palmer [census district], 112
Palmer, H., 86
Palmer v. Public Trustee of New South Wales [insolvency], 1916, 21 CLR, 645, 343-44
Palmerston, 102
Palmerston, C., 143
Paluma, 131, 133
Paris, 16, 17, 324
Eiffel Tower, 324
Notre Dame, 71
Temps, 136
Parker, S.H., 209
Parker, H., 112
Parker v. Public Trustee of New South Wales [insolvency], 1916, 21 CLR, 645, 343-44
Parliament federal [House of Representatives and Senate], 189-93, 196, 197-99, 200, 204, 205, 209, 213, 238, 283, 321, 322, 349 [see also legislation, 264, 265, 266, 321, 349]
Queensland [see also legislation, parties, Speaker, Treasurer]: Cabinet, 62, 90; Executive Council, 90, 99, 128, 154, 159, 232, 241; Legislative Assembly and Legislative Council: exclusion from, 223-24; money powers, 72; presidency of Legislative Council, 45, 246; provincial plans, 174, 191; relationship Houses, 53, 59, 93, 94, 101, 168, 175, 188, 191-92, 269, 353, 375 n20; sketches of members, 12, 22, 24; SWG in: visiting, 11; 1870-72, 30-32, 38; 1872-79, 40-46; 1879-83, 63-65, 84-87; 1883-88, 88-106, 110-19, 142-50; 1883-88, 188-93, 150-51, 170-77 [see also attorney-general, minister for public instruction, public works]; views of members, 118, 181, 236; voting patterns, 86, 87, 88, 105-6, 147, 148, 173, 208; voting rights, 68
Parry-Okeden, W.E., 169
Parsons, James, 3
parties, political [see also Opposition, Reform League]: federal prognostications, 192, 197, 201
pastoralism, 5, 93, 94, 105, 220, 221, 228, 233-37, 306-7, 338-39. See also class, pastoralists
Paterson, Macdonald. See also Macdonald-Paterson
Paton, J.G., 131, 171
Pattison, W., 95, 150, 153
Paul, G.W., 24, 367 n5, 398 n28
Payne family, 21
Peacock, Dr, 312-14
Peacock v. R. [murder], 1911, 13 CLR, 619:312-14. See also Packer's case
Peak Downs, 72, 165
Peak Downs Telegram, 242
Pearce, G., 354
pearl fishing, 54
Pearson, C.H., 215
Pell, M., 10
Pericles, 150
Perkins, P., 64, 77, 88, 150
Perkins v. The Evangelical Standard [libel], 1881, QLJ, 1, 43:77
Permanent Building and Investment Association v. Hudson [enforcing intercolonial judgment], 1896, 7 QLJ, 23:238
Perpetual Executors and Trustees Association of Australia Ltd v. Hoshen [registration land titles], 1912, 4 CLR, 286:308
Perth, 151, 262, 266, 301, 318, 319, 322, 335
Daily News, 327
Peters wold v. Bart ley [constitutional], 1904, 1 CLR, 497, 267-68
Petrie, J., 118
Phlip, R., 208, 211, 212, 213, 255, 395 n69
Phylae, 10, 11
physics, 9, 10
Piddington, A.B., 296
Pietzcker, A.R.H., 104
Pilcher, C., 14, 15, 26, 28, 366 n66
Pisa, leaning tower of, 324
Plant v. Attorney-General and others [mining], 1893, 5 QLJ, 57:222
Plant v. Rollston [mining], 1894, 6 QLJ, 98:221-23, 225
Playford, T., 132, 172, 189, 190, 191
Plunkett, J.H., 33
Poke, 313
police, 113, 116, 118, 130, 131, 135, 139, 160 n1, 163, 166, 167, 223, 228-32, 244, 277, 279, 388 n6
native, 113-15, 143, 176, 379 n26
Scotland Yard, 119
politics. See Parliament
Polynesians. See Pacific Islanders
Pompeii, 16, 325
Pope, A., 1, 23, 88, 363 n1, 367 n1, 374 n1
Port Douglas, 111, 114, 245, 399 n57
Porter, in re [articled clerk], 1870, QSCR, 11, 79:26, 367 n16
Portishead, 1, 2, 19, 324, 364 n11, n12
Highland Cottages, 324
Port Moresby. See New Guinea
Port Pirie, 296
Port Said, 322
Portsmouth, 324
Port Stephens, 30
postmaster-general, 43, 88, 142, 163, 296, 310
Potter, Bishop, 142
Potter v. Minahan [immigration], 1908, 7 CLR, 277:317
Powers, C., 166, 169, 239, 293, 296, 301, 326, 327, 328, 329, 330, 331, 332, 333, 334, 336, 337, 338, 345, 355, 356,
Powers C., in re [admission as barrister], 1894, 6 QLJ, 70:239
Power, V., 50, 221, 224, 228, 239, 397 n22
precedence, 258, 287
Prentice, Dr, 59
Presbyterians, 2, 4, 131, 171, 176, 311, 382 n98
[see also Macqueen's case]
churches: Brisbane (Ann Street), 311; Church of Scotland, 311; General Assembly, 311; Maitland (Free Church), 5; Maitland [St Stephen's], 29; Westminster Confession, 311
Pritchard, family, 139
prickly pear, 307
Prince of Wales, 324
Pring, judge, 360
Pring, R., 31, 35, 37-38, 46, 49, 51, 52, 68, 73, 75, 76, 77, 86, 368 n36, 373 n76
Privy Council
appeals on legal decisions from colonial courts, 48, 51, 58, 69, 234, 235, 258
appeals on legal decisions from High Court, 262, 267, 268, 269, 270, 271, 272, 273, 275, 276, 277, 284-85, 287, 293, 294, 300, 301, 302, 303, 304, 310, 318, 326, 327, 333, 336, 339, 340, 342, 343, 351, 360, 375 n20
appeals political decision, 93
debates on limitations of appeals to, 189, 191, 192, 200, 208, 210-15, 255, 257, 258, 261, 263
law lords, 322, 323, 351-52, 360
SWG seat on, 322-23, 349, 355, 360, 396-97, 401 n14
probation. See law
Protectionist [party], 289, 290, 321
Prussia, 223
public instruction. See education
public service, 92-93, 96, 146, 169, 266, 267, 274, 292, 301, 353, 375 n15
Civil Service Board, 169
Public Service Board, 301
public works, Queensland, 31, 41, 43, 94, 111, 116, 372 n48
Minister of, Dutton, 142
Miles, 88, 142
SWG, 45, 52, 60, 63, 111, 372 n48
Pugh, T., 171
punishment
corporal, 123, 133
goals, 123, 144: Brisbane, 129, 242
probation, 119, 380 n52, 384 n30
remission of sentences, 118, 144
Purari River, 145
Purcell v. Bacon [contract selling cattle], 1914, 19 CLR, 241:338-39
quarantine, 90, 145
Quarrel's appeal [dummying], 1897, 8 QLJ, 121:227-28
Queen. See also R. (Regina); Edward VII
Queensland
Defence League, 31
Evangelical Standard, 77
Federation League, 206, 207
Guardian, 11
idem v. Hart and others [malpractice], 1894, 6 QLJ, 186:396 n2
Investment and Land Mortgage Company v. Grimley [malpractice], 1892, QLJ, IV, 224:181-82
National Association, 180
separation [see also separation], Trustees [Limited], 234
United Licensed Victuallers Association, 122
Queen Victoria, 139, 141, 242
Quetta, 180
Quick, Dr, 204
Quinn (or O'Quinn), J., 75, 77
Application of Right Reverend Dr James Quinn in re the Real Property Act [property], 1861, QSCR, V, 7:75
racism, 196, 198, 229, 243, 316. See also
Aboriginals; Chinese; migration; Pacific Islanders
Raff, [G?], 34
Railway Commissioners, 50, 182
railways, 31, 50, 84-85, 182, 184, 268
Railway Servants' case [conciliation and arbitration], 1906, 4 CLR, 488:268, 326 n59; 403, See also Annear; Campbell; Kirk; land-grant; travel: Willcock
Randall, G., 104
Rankin, Mr, 25
Ranking, R.A., 163
Raphael, 17
Raven, 98, 114
Raven, N.W., 148
Ravenswood, 113
Rea, W., 86, 87
Real, P., 65, 120, 178, 182, 221, 222, 225, 226, 228, 230, 231, 232, 234, 237, 239, 305
Red Cross, 352
Redland Bay, 97
Reeve, H.M., 4
Reeves, W. Pember, 209
reformatories, 117
Lytton, 117
Toowoomba, 117
Reform League, 31, 368 n35
registrar-general, 112, 308
R. v. Archibald [murder], 1869, QSCR, 11, 47:25, 367 n13
R. v. Barger [constitutional], 1908, 6 CLR, 41:289
R. v. Batho [solicitor], 1868, QSCR, 1, 196:26, 367 n16
R. v. Brunnock [grievous bodily harm: sanity], 1894, SCT/AL 127:244, 399 n54
R. v. Commonwealth Court of Arbitration,
ex parte Broken Hill Proprietary Co.
{conciliation and arbitration}, 1909, 8
CLR, 419:296-97
R. v. Criib (mining), 1886, QLJ, 11, 157-95
R. v. Crishna, the {kidnapping}, 1873, QSCR,
111, 131:36, 369 n60
R. v. Griffin (murder), 1868, QSCR, 1,
176:25, 367 n12
R. v. Grills {unnatural offence: evidence},
1910, 11 CLR, 400:311-12
R. v. Gomez (murder), 1880,
QLJ, V, 189:76-77
R. v. Hart {Queensland National Bank},
1898, 9 CLR, 95:396 n2, 400 n67
R. v. Heal, Swinborne relator {elections},
1875, QSCR, IV, 104:51
R. v. Jimmy {piracy}, 1875, QSCR, IV,
130:50
R. v. Judd {War Precautions Act}, 1919, 26
CLR, 168:331
R. v. Kenniff {murder}, 1903,
QSR, 17:228-32, 398 n25
R. v. Kidman and others {retrospective
legislation}, 1915, 20 CLR, 425:342
R. v. Morris and others {licensing}, 1894, 6
QLJ, 9:225
R. v. Nicholls {contempt of court}, 1911, 12
CLR, 280:318
R. v. Pender {unidentified}, 1870:26
R. v. Snow {trading with enemy}, 1915,
20 CLR, 315:328
R. v. Sutton {constitutional}, 1908, 5 CLR,
789:289
R. v. White and Richardson {burglary},
1806, Russ. and R., 99:232
R. v. Yaldwyn et ors {licensing}, 1889, 3
QLJ, 144:152
Reid, G.H., 202, 204, 206, 207, 210, 211,
257, 262, 264, 323, 394 n48, n57, n63
Reid v. McDonald and another {contract,
ice skating rink}, 1907 4[2] CLR,
1572:304-5
religion, 294, 295. See also Christianity
remission of sentences. See punishment
Rentoul, J.L., 176, 391 n70
Republican. See Charters Towers
Resolution Island, 114
Review of Reviews, 205
Rich, G., 296, 301, 327, 328, 329, 330,
331, 332, 333, 336, 337, 338, 344, 345,
348, 356, 360, 405 n25
Rich, son, 348
Richmond River, 245
Ripon, Lord, 182
Robb, J., 182, 184
Roberts and Daly, solicitors, 38
Robertson, J., 153
Robinson, Lady, 323
Robelimes v. Brenan {deportation}, 1906,
Roche, in re, unidentified case, 26
Rockhampton, 13, 28, 46, 59, 94, 101,
133, 147, 148, 149, 161, 162, 170, 178,
179, 232, 239, 338-39
circuit court, 24, 34, 35, 52, 240, 241-42
Crocodile Creek Bridge, 60
Immigration Depot, 104
Queensland Provincial Council, 106
Supreme Court, 25, 26, 168, 229
Roe, R.H., 180
Roger, R., 63
Roma, 92
circuit court, 240, 243, 253
Roman Catholicism, 45, 59, 75, 77, 103
108, 196, 370 n72
St Mary's Cathedral, Sydney, 196
Rome, 16, 324
Basilica, 16
Parliament, 70
Roman lady, 336
St Peters, 16, 71
Tarpeian Rock, 16
Vatican galleries, 16, 17
Rosebery, 5th Earl of, 141, 156
Rosebery, Countess of, 141
Rose, W.K., 161, 323, 376 n53
Ross, Dr, 3, 4
Rothschilds, 153
Rotterdam, 328, 329
Rouen, 16
Round Table Committee, 352
Rowe v. Australasian United Steam
Navigation Co. Ltd {contract, negligence},
1909, 9 CLR, 1:305-6
Roxburgh v. Tully {property}, 1883, QLJ,
1, 144:75
Rubens, P.P., 17, painter of "Crucifixion",
17; "The Descent from the Cross", 17
Rudd, Steele (A.H. Davis), 396 n1, n5,
397 n10, 398 n25
rural boards, 31
Rusden, G.K., 5
Ruskin, J., 17
Russell River, 115, 143, 175
Russia, 131, 132-33, 202, 283
Rutledge, Sir Arthur, 65, 87, 88, 99, 106,
138, 144, 182, 188, 190, 250, 400 n77
Ryan, T.J., 240, 335, 353, 354, 356-57
Ryan, T.J., ex parte, No. 1 [attendance at
Court], 1900, 10 QLJ, 41:240
Ryan, T.J., ex parte, No. 2 [exemption
examinations], 1900, 10 QLJ, 45:240
Ryan v. Daly, unidentified case, 26
Rysdael, J., 17
Sabine, Mr, 23, 27
sailing. See sports
St Albans, 71
St Helena, 118
Sale, 235
Salisbury, 3rd Marquis of, 136, 138, 141
Salvation Army, 144, 307-8
Samoa, 329
San Francisco, 142, 329

Sargood Brothers v. Commonwealth and another (customs duties), 1910, 11 CLR, 258:315-16

Savage, J., 114

Sawer, G., author Australian Federalism in the Courts, 272, 295

Schofield, H., 98-99

scholarships, 369

Barker, 10

Cooper, 10

Mort, 14-20

Schools of Arts: Brisbane, 24, 26, 27, 47, 204, 207; Maitland, 8; Sydney, 11

Scotland, 16, 19, 104, 114, 122, 154, 155, 177, 322, 324

Scottish Gympie Gold Mine Ltd v. Carroll (conversion of gold), 1902, QSR, 311:238

Scottish Hero, 68

Scott, J., 5, 88

Scratchley, P., 126, 127, 128, 131

Scylla, 16

Seine River, 16

Selborne, W., 400 n68

Senate. See Parliament, federal separation, division of Queensland, 101, 105-6, 111, 138, 145, 147, 148, 150, 173-75, 191, 378 n83, n84

League (central), 173, 174

League (northern), 174

Service, J., 89-90, 124, 126, 127, 129, 130, 132, 136, 153, 186, 189, 207, 381 n78, 393 n2

Seymour, D.T., 113, 115, 119

Shakespeare, 221, author, historical plays, 16; King John, 10; Othello, 356; The Taming of the Shrew, 26

Shand, A.B., 326

Shaw, A., 172-73, 390 n58

Shaw, Alfred, and Company Ltd v. Drake and Stubbs (intercolonial actions), 1897, 8 QLJ, 12:238

Shaw, I.M., 367 n2

Shaw, L., 98-99

Sheppard, E., 24, 76, 373 n75, n76

Sheridan, R.B., 99

Shops and Factories Commission, 1891, 161

Sicily, 16, 17

Simpson, G., 48-49. See also Attorney-General v. Simpson

Singapore, sugar labourers, 102, 377 n66

Singhalese, sugar labourers, 102, 377 n66

Skinners, 324

Skye, Isle of, 18

Smith, A. Bruce, 209

Smith, H., 16, 18, 20

Smith, M., 139

Smith, R. Murray. See agents-general

Smith, Mrs, 141

Smith, Mrs A.C., 323

Smith, professor, 27

Smith, R., 10

Snow, artist, 286

socialism, 150, 241-42

solicitor-general, 59, 183

solicitor, in re, a (malpractice), 1902, QSR, 9:239

Solomon Islands, 100

Somerset, 1, 16

Sophocles, author Antigone, 9

South Africa, 352


Northern Territory, 172, 176, 350

Southport, 108

Spa, 221

Spaniard, 283

Sparme v. Osborne (noxious weeds), 1908, 7 CLR, 51:307, n49, 406

Speaker, Queensland, 43, 88-89, 223-24

spies, government, 169, 389 n38

Spooner v. Alexander (strikes), 1912, 13 CLR, 704:315

sports: bicycling, 245-46, 250; cricket, 11, 40, 61, 108, 253, 287; croquet, 62; fishing, 27, 28; football, 108; gambling, 298; golf, 246, 404 n107; ice-skating, 304, 305; mathematical problems, 348; racing, 108, 295; riding, 26, 27, 28, 106, 217; rowing, 11; sailing, 9, 23, 27, 28, 106, 108-9, 217, 286; shooting, 11; swimming, 11, 27, 28; tennis, 61; walking, 27, 28, 251, 285, 407 n73, 409 n53

Springsure, 72

Stamfordham, Lord, 410 n69, n90

Stanley, 97

Stanthorpe, 34, 111

Starke, H.E., 293, 330, 332, 405 n15

State of New South Wales v. Commonwealth and others (wheat case), 1915, 20 CLR, 54:327, 330, 350

states—rights, 198, 249, 261, 266, 288, 289, 331. See also courts, High, constitutional; federation

Steamships’ case, 1912, 15 CLR, 586:299-300 n34, 406

Steele, Dr, 286

steel rails affair, 63-65, 68-69, 71, 72

Stephen, A., 58, 150, 386 n63

Stephen, C., 9

Stephen, author Commentaries, 13

Stephensen, re (insolvency), 1894, 6 QLJ, 32:226

Stephens, T.B., 31, 37, 41

Stewart, R.M., 43, 44

Stirling, 324

Strachan v. Strachan and others (licensing), 1893, 5 QLJ, 45:225

Straits Settlements, 323
Kissing Point, 133, 135
Magnetic Island, 135
Northern Queensland Separative Council, 105, 106
Northern Separative League, 105
Ross Island, 116
Tozer, H., 84, 161-66, 168, 387-88 n1, 389 n35

tramways. See transport, unions
transport, 131, 142, 291, 292, 310, 314, 338, 370 n77 [see also Cashmore, land-grant railways, travel]
steamships, 299-300 [see also Steamships! case]
SWG policy, 110-11
trams, 332-34
Tramways case (1) 1914, 18 CLR, 54:332, 408 nl7, (2) 1914, 19 CLR, 43:333, 408 n21

travel [see also transport]
carriage, 108
expenses of judges, 258
free passages, 46
in New Guinea, 177
in northern Queensland, 59, 106, 111, 147, 170, 245
Pullman Palace Car Company, 142
Railways Commission, 343
road, 34, 131, 324
ship, 3-4, 15-16, 18, 20, 29, 30, 33, 34, 64, 72, 76, 119, 131, 142, 170, 245, 251, 322, 325
train, 16, 34, 50, 78, 106, 110, 131, 142, 221, 237, 242-43, 253, 314, 322, 324, 343, 347, 348

Treasurer, Queensland, 45, 88, 111, 142, 146, 150
Trollope, A., author Orley Farm, 14
Tryon, G., 114, 132-35, 146, 147, 383 n114
Tully River, 114
"Tupra", station, 235
Turkey, 18
Turner, J., 84
Turner, J.M.W., 17, 84
Turner, W., 221
Tyson, J., 132, 233-37, 256
Tyson, in re, deceased, Mulholland v. Doneley and another (probate), 1900, 9 QLJ, 339-234
Tyson, in re, ex parte Queensland Trustees Ltd (succession duty), 1900, 10 QLJ, 34:234-35
Tyson, in re, R. v. Queensland Trustees Ltd (domicile), 1900, 10 QLJ, 151:235-37, 398 n32

Unemployment, 1, 103, 116, 168-70, 379-80 n40, 380 n42, 384 n32

unions, 124, 144, 160-61, 178, 179, 272-73, 296-97, 315, 391 n84 [see also boot trade, class and employment, strikes, timber trade]
Australian Labourers’ Federation, 333
Australian Workers’ Union, 272
Federated Labourers [Townsville], 151
felhatters’, 332
5th Intercolonial Trade Union Congress, 144
Hobart waterside workers, 334
Labourers and Lumpers, 116
Omnibus and Tramway Employees, 144
Queensland Labourers, 151
Queensland Shearers’, 151, 179
Seamen’s Merchant Guild, 299
Shearers’, 272
Society of Boilermakers and Ironshipbuilders, 123
Trades and Labour Council, 123-24, 147, 148
Trades Hall, 223
tramways’, 333
Waterside Workers’ Federation of Australia, 334
Wharf Labourers’, 161, 265
Union Trustee Company, 233
United Australia, 209
United Kingdom. See Britain
United States of America. See America
universities, 59, 63, 309, 404 n110
Cambridge, 323, 324, 399-400 n63, 407 n90; St John’s College, 10;
Trinity College, 142
Melbourne, 15, 16, 62, 240, 286, 287
Oxford, 12, 16, 18, 324; Press, 407 n79
Queensland, 41, 59, 148, 181, 246, 319-20, 399 n62, 407 n75; Queensland Extension Council, 319, 399 n62
Sydney, 9-11, 13, 14, 26, 63, 121-22, 195, 237, 245, 286, 319, 320, 361, 399 n56, 404 n109, n110, Sydney
Senate, 286; Fisher Library (Sydney), 361
Wales, 324, 408 n95
Unmack, T.O., 84, 387 n1

Vancouver, 321
Van Dyck, A., 17
vend agreement, 292-94, 322
Venice, Venetia, 17, 18, 324
Verona, 17
Vickers v. Sellheim (cattle branding), 1883, QLJ, 1, 131:76
Victoria, 221, 233, 235, 237, 240, 268, 296, 317, 331, 333 [see also courts, justices, Queen]
Chinese legislation, 55
criminal absconder, 57
defence policy, 132, 134, 138
education, 59
Wilson, W.H., 142, 169, 217, 253, 387-88 n1
Wimbledon, 134
Winder, W.C., 182, 386 n63, 388 n2, 392 n91
Windsor Castle, 141
Winfield v. Lands Purchase and Management Board of Victoria and State Rivers and Water Supply Commission [negligence], 1914, 18 CLR, 606:342
"Winnivy", orchard, 347
Winter, F., 286
wireless telegraphy, 195, 290, 310, 311.
See also Marconi
Wise, B.R., 145, 153, 195, 204, 207, 213, 268, 293, 396 n91, 405 n15
Wiveliscombe, 1, 2, 3, 20, 70, 324, 364 n13
Wollaston, Dr, 316
Wollaston's case [constitutional], 1902, 28 VLR, 357:266, 267
women, 26, 50-51, 56, 59, 117, 118, 223, 241, 242, 243, 245, 281, 283, 341, 342, 371 n13, 379 n23, 380 n45, n50, 383 n109. See also Levy's Duckmann's case, Griffith, S.W., relations women; Levy's case
Wood, W., 24, 367 n4
Wooklark Island, 127
Woodward, A., 101
Woodworkers' case [conciliation and arbitration], 1909, 8 CLR, 465:297-98 n27, 406
Woody, Little Island, 322
Woolley, J., 9, 10, 404 n110
Working Boys' Home, 180
work. See class and employment, labour
Wright, Capt. H.T., 146-47, 158-59
Wright, J.A., 190
Wrixon, H.J., 195, 196, 199, 207
Wrixon, Lady, 287
Yandina, 182
Yangtze, 16
Yatala, 100
Yeates, Mr, 92
Yeppoon, 170
York, 3, 324
York, Archbishop of, 386 n63
York, Duchess of, 257
Young v. Smyth (sugar fieldwork), 194, 6 QLJ, 73:237
Zamora, 103, 104
Zealandia, 321
zeppelins. See aeroplanes