

**THE RIGHT HONOURABLE SIR OWEN DIXON,
O.M., G.C.M.G.**

BY DOUGLAS I. MENZIES*

Unlike the students of the past forty years, I had ceased to be a law student before the name 'Owen Dixon' meant much to me. While I was a student I had heard of his prowess as counsel particularly from my cousin, R. G. Menzies, who, on the very day in 1925 that I arrived in Melbourne from Tasmania to start a law course, talked in the garden of his father's home of Dixon's remarkable forensic ability. He said that Dixon alone of counsel actually enjoyed appearing in the High Court—then a Court of judges contentiously holding individual convictions which were pungently expressed. There, so I was told, he would with diabolical skill set one judge against another in dialectical combat in the course of persuading the majority to decide in his favour. Later I found out for myself the delight he took in the skilful isolation of a minority opposed to his point of view. I never found Dixon held views about anything tentatively. When he spoke he spoke with authority. I have heard him spoken of as a modest man. I saw nothing of that side of his character except in his attitude to those to whom he gave his affection.

Dixon had become a judge when I became President of the Law Students' Society of Melbourne University which then accepted graduates of up to three years' standing as members. He was the judicial guest at the Society's annual dinner in 1930 and never have I heard such outspoken criticism of fellow judges. It was a good dinner. Mr L. B. Cussen, a great trial lawyer, was there as the guest representing the Bar and as he spoke, Dixon, from his seat at the table, kept on reminding him of his own interesting experiences in the conduct of cases. Dixon remembered more about Cussen's cases than did Cussen himself: but that was typical of Dixon. The next morning he telephoned me and asked me to come to his chambers. He told me that he had deliberately spoken frankly to law students but, of course, he would not wish that his remarks should be published more widely. I assured him that no representative of the Press had been present and that I would make sure that no law journal would report what he had said. We then drank tea and talked, as has happened so often since. From that time, Dixon, I believe, regarded me as one of his friends. His willingness to give his friendship to young men was a most

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endearing characteristic of the great man. Many were honoured and encouraged as I was. For me, that friendship lasted until his death 42 years later. As time went on I, as his guest, met many interesting people, such as Dean Acheson and Barbara Ward, who shared his tremendous range of interests. He loved to open his own wide world to his young friends. I remember Mr Justice Frankfurter in Washington speaking with admiration of Dixon's ranging intellect. Never was this more apparent than when he was the Australian Minister in Washington during the war years. He, by virtue of his own outstanding ability, established the terms of intimacy not only with the lawyers of the United States, but with the President and General Marshall and Admiral King—a difficult man—with Harry Hopkins and with others upon whose shoulders the destiny of the world rested. Indeed, Dixon was never out of his depth in the company of any specialists. He delighted in cases which involved a study of specialist fields of knowledge and was never averse, when the occasion arose, from supplementing the evidence of expert witnesses from his own reading and investigation.

Dixon had a very practical intelligence. I remember that, as the Controller of Shipping during the war, he was frustrated by his inability to obtain some unified control of the port of Darwin in order to move ships expeditiously. The harbour was full of ships waiting to be unloaded. I was, at the time, the Secretary of the Defence Committee and he asked me to come to the office he occupied as Chairman of the Central Wool Committee. He told me of his difficulty and asked could I help him. I suggested that he dictate a statement of the problem and of its solution. He did so immediately. While it was being typed we drank tea and talked. Later that day I was able to tell him that the Defence Committee had accepted his solution and letters were going out to all concerned to put it into effect. It was too late. Within a few days, Darwin was raided with great loss of ships. Had what he proposed been put into effect earlier, there would have been fewer ships in Darwin. He foresaw what unfortunately happened.

It was an exacting task to argue a case before the High Court presided over by Dixon. Indeed, it was, for a number of reasons, very much more strenuous to argue in the High Court than in the Privy Council. Time and again, even after the most careful preparation of an argument, a question from Dixon would dictate a difference of emphasis or perhaps a change of its course. He delighted in arguing although I think it was but rare that he was moved by argument to depart from a previously expressed view. One of the most strenuous arguments I remember in the High Court was in the *Boilermakers'* case¹ when I knew that to succeed it would be necessary to reverse the current of thought of the Chief Justice. That

¹ (1957) 95 C.L.R. 529.

current had begun a long way back. When Mr Latham was Attorney-General to the Commonwealth, he asked Dixon what he thought of the new dispensation for the Arbitration Court made after *Alexander's* case.² Dixon, as he once told me, replied 'Out of the frying pan into the fire'. From that *dictum* he never departed and it was made good by the judgment of the majority of the High Court in the *Boilermakers'* case.³ After the hearing had been concluded Dixon spoke to me at breakfast at 52 Macleay Street, as he walked passed the table where I was sitting. He paid me the compliment of saying that he had enjoyed the argument and in consequence of it he had made some alterations to an address 'Marshall and the Australian Constitution' which he had prepared to deliver at Harvard. He added with a characteristic smile: 'The alterations are, of course, minor'.

It was not until I was appointed a justice of the High Court that I came to know Dixon intimately. Upon my appointment, he wrote me a letter of welcome in which he gave me a lot of practical advice including suggestions for the best kind of staff to help me. It was full of kindness.

It was a great privilege to sit as a member of the High Court presided over by Dixon and share with him the work of the Court. The insight that his questioning gave to Counsel was reinforced by his comments to his brother judges. Sometimes they were caustic: 'I would not be seen dead with that decision' he once said of *Osborne v. Amalgamated Society of Railway Servants*.⁴ Although he was never hurried, he was always assured. His authority was, of course, enormous, and when he was concerned that a decision should go in a particular way, his aim was to get his own judgment out first for circulation to other members of the Court. To differ from him was a course always taken with hesitation and never without foreboding. Never, however, did he attempt to win support for his opinion by arguing with other members of the Court. If his judgment did not convince, then nothing more could or would be done. Nevertheless, he was always willing to talk with other judges about their difficulties and about their judgments. Often have I heard that great judge, Sir Wilfred Fullagar, talk with Dixon about some proposition that he had formulated, put down on a little piece of paper, and was considering. Thus wisdom was distilled. It was in this manner that the Court inevitably took on something of the quality of its Chief Justice. When Dixon was Chief Justice, there were with him on the Court at least two other judges of quite remarkable ability. Greatness encouraged greatness and set a high standard for those who could not aspire to greatness. It is small wonder, therefore, that the Court over which Dixon presided gained the world-wide eminence and authority which it did.

² (1918) 25 C.L.R. 434.

³ (1957) 95 C.L.R. 529.

⁴ [1910] A.C. 87.

The years of his retirement were lived very privately. He was very much a family man and it was with his family and with friends who called to see him that his last years were spent. He died full of years and honour.