The art of advocacy: Sir Garfield Barwick, the radical advocate

Address in honour of the Rt Hon Sir Garfield Barwick AK GCMG QC
delivered by The Hon Sir Anthony Mason AC KBE GBM[1*] on 15 March 2017

The object of my address this evening is to present a picture of Sir Garfield Barwick the advocate. In my long experience in the law, he was the finest advocate I ever heard. This view was widely shared. Following his death in 1997, the Law Council of Australia said of him: 'a great barrister, probably the leading appellate advocate our country has produced'.[2]

I do not intend to cover other aspects of Barwick's career – his life in politics, his service as attorney-general and chief justice of the High Court. I should, however, mention that his plan to study law at the university when he left school was not approved by his father, who said to Barwick's mother 'These books will get Garfield nowhere – he needs to be an apprentice and come into the printing business with me.'

The reasons for Barwick's success, though by no means easy to convey in words, also explain why in the title of this address, he is described as 'the radical advocate'. And his success as an advocate enabled him to make an unmatched contribution to the life and fortunes of the New South Wales Bar, as well as his contribution to the reformation of the law as attorney-general of the Commonwealth.

In this address I shall refer to him simply as 'Barwick', for that is how he was known by members of the legal profession in my time. In speaking of him, I shall draw in part on my experiences of working with him as a junior counsel and appearing against him. Unfortunately there are now relatively few lawyers who can now speak from personal experience of Barwick as an advocate.

There are two important points about the era in which Barwick flourished as an advocate. First, Australian law was then largely a reflection of English law. An appeal could be taken from the High Court and State Supreme Courts to the Privy Council in London. There was a prohibition under s 74 of the Constitution against appeals to the Privy Council involving *inter se* constitutional questions, unless a certificate was given by the High Court. But that was all. So, strange as it may now seem, the Privy Council was the ultimate court of appeal in the Australian court system before the appeal to the Privy Council from the High Court was finally abolished in 1975 and from State Courts by the *Australia Act 1986* (Cth.), s 11. The High Court generally followed House of Lords decisions and courts below the level of the High Court followed House of Lords and English Court of Appeal decisions. And our legal text-books were almost exclusively English text-books. Secondly, and this point has great relevance to Barwick's advocacy – in his era advocacy was oral, uncluttered by any requirement for written submissions. Today's requirements for case management and written submissions, which compel a party to present its entire case in those written submissions, restrict the freedom and flexibility which counsel enjoyed in earlier times to frame their case and present oral argument. The judges now read the written submissions before the oral argument begins with the result that they are better equipped to interrogate counsel during oral argument than they were in Barwick's day when the argument took shape as the oral presentation proceeded.

I first encountered Barwick when Bob Ellicott and I, as law students, went up to the old High Court in Taylor Square to hear him argue cases when Sir John Latham was chief justice. What struck me even then was his confidence, his mastery of the materials, his ability to put his points clearly and his remarkable capacity to answer questions persuasively.

I next encountered him when I was briefed as his junior by Clayton Utz & Co., where I was an articled clerk, in an equity suit brought by the 'green chair holders' in the White City tennis courts. Their rights were put at hazard under restructuring proposals by the White City. The green chair holders were licensees not lessees so we endeavoured to establish a negative stipulation against impairment of their rights, based on the old English decision *Stirling v Maitland*[3], an endeavour which ultimately failed in the High Court[4]. In our conferences, held in the late afternoon after he returned from appearing in other cases, he radiated energy with an ability to switch his mind immediately from consideration of one problem to another.

I was instructed in a series of cases with Barwick by J W Maund and Kelynack, a firm which briefed him throughout his career at the bar. In the first of these cases, we acted for Nelungaloo Pty Ltd which had earlier failed in the High Court in its challenge to the compensation payable under reg. 19 of the Wheat Acquisition Regulations.[5] The Privy Council rejected Nelungaloo's appeal on the ground that an *inter-se* question was involved and that it had no jurisdiction under s 74 of the Constitution[6]. We then attempted unsuccessfully[7] to establish a different cause of action against the Commonwealth, involving the interpretation of the Regulations. I suggested an interpretation of an earlier judgment of Sir Owen Dixon that might favour us, though the judgment had an obscure qualification to it. Barwick's response was: 'Young fellow, never cite a case that has got a smudge on it.'

He explained that dealing with such a case would present a distraction from the main thrust of our argument and disrupt its momentum. Better to leave the citation of the case to our opponents and deal with it in our reply when we might use it to our advantage, with the benefit of having the last word.

We were also briefed for Ray Fitzpatrick, the 'Mr Big' of Bankstown. Mr Morgan, the ALP member for Bankstown in the House of Representatives, had called attention in parliament

to some of Fitzpatrick's questionable activities in the Bankstown area. Fitzpatrick then commissioned Frank Browne, a hard-hitting journalist, to attack Morgan in the pages of the *Bankstown Observer*, Fitzpatrick's local newspaper. Fitzpatrick and Browne were summoned to appear before the Privileges Committee of parliament in Canberra. Barwick was unavailable on the day so it was left to me to apply for leave to appear. Leave was refused. Barwick had advised Fitzpatrick to take 'your pyjamas and toothbrush with you'. Barwick, instead of returning a brief, was sometimes content to allow the junior to conduct the case, if the solicitor agreed. Suffice to say that a challenge to the validity of the subsequent committal for contempt by parliament of both Fitzpatrick and Browne failed both in the High Court and the Privy Council. Barwick did not appear in these cases.

Shortly after these events, we were briefed for Fitzpatrick in connection with an order he placed for the manufacture of a blue metal crusher for his blue metal quarrying business. We advised him to assert that there was no binding contract after he was informed by the manufacturer that it was about to begin manufacture of the crusher. Fitzpatrick was sued in the Supreme Court for breach of contract. As was so often the case, there was some doubt whether Barwick could appear as he had a part-heard case in the High Court. Just as senior counsel against us finished his address, Barwick arrived and addressed the judge. You would have thought from his submissions that he had been present throughout the hearing.

When the judge reserved his decision, Barwick said to me, 'We shall win this case. Don't settle it while I am away in London'. While he was away, the solicitors came to see me and said 'We've received a very good offer of settlement. Should we accept it?' I informed them of Barwick's instruction, but, they said, 'we want your advice'. I told them to accept the offer. When Barwick returned from London he said 'Well, young fellow, you did not follow my advice'. I explained the circumstances. Later, just to rub the point in, he told me he had spoken to the judge, whom he knew, and the judge said he would have decided the case in our favour.

Shortly before these events, I appeared with W R Dovey QC and E G Whitlam in a series of prosecutions of witnesses who had appeared before the Royal Commission into the Liquor Industry for giving false testimony on oath. The royal commissioner was Justice A V Maxwell of the Supreme Court, a judge with a sharp mind and a gracious and charming manner out of court, which was not always exhibited in court. It was considered that, as commissioner, he had behaved in an oppressive manner to witnesses and extracted from them by unacceptable means admissions of illegal activities. Barwick's brother was among a large number of hotel licensees who were the subject of adverse findings by the judge.

Barwick appeared for one of the licensees charged with giving false testimony in the commission on oath, Doyle Mallett, the licensee of Gearin's Hotel at Katoomba. Barwick raised a novel point: that the commissioner's appointment had been invalidly extended because it was extended under the *public seal of NSW, not the great seal of NSW* as required by statute. This question was left to the jury. It should not have been. What impressed me about Barwick's advocacy was not his clever point about the invalidity of the extension of the commissioner's appointment, which was ultimately rejected by the full court of the Supreme Court [8], but his attack on the oppressive nature of the commissioner's conduct. I remember him saying to the jury:

> You might well conclude that the only resemblance between this Royal Commission and a court of law began and ended with the furniture in the room in which the Commission was conducted.

Barwick's client was acquitted.

Another case in which we were involved was a case turning on the notoriously difficult transitional provisions of the *Local Government Act 1919* (NSW). We represented a class of local government officers who contested the interpretation placed upon these provisions by their employers, the local government councils. Barwick had given an opinion that our case had 'reasonable prospects of success'. At a conference before the hearing he said to me 'Well, son, we're pushing a wheel barrow full of lead up a steep hill here!'

He made no reply when I responded: 'But the brief contains your opinion stating we have reasonable prospects of success'.

In his lexicon the expression 'reasonable prospects of success' did not mean good prospects of success. It meant that the case had *some* prospects of success and all the more so if he was to argue it. The case was adjourned with the result that Barwick was unavailable so that Else-Mitchell QC had the privilege of losing the case.

I don't want you to think that Barwick lost the case whenever I appeared with him. That was not so. In *Fishwick v Cleland*[9] in the High Court in 1963, one of the last cases in which he appeared as counsel, indeed as attorney-general, the High Court upheld his arguments supporting the validity of the territory legislation imposing taxation in Papua-New Guinea.

Before I discuss his extraordinary success in the Privy Council, I should mention one more case. It was a case in which he did not appear but, as we understood it, he was the architect, as Commonwealth attorney-general, of conditions sought to be imposed on the licensees of Channels 7 and 9 and for whom Bob

Ellicott (led by J D Holmes QC) and I were appearing respectively. We challenged the validity of the conditions on the ground that they were beyond the powers conferred upon the postmaster-general by the *Broadcasting and Television Act 1942*-1960 (Cth.). Our challenge succeeded in the High Court[10]. During the course of the argument by our opponents Maurice Byers QC and John Kerr QC, John Holmes whispered to me 'This is a very ingenious argument – a Barwick point - but fortunately for us – Barwick is not arguing the point'. And Holmes was right. Had Barwick been arguing the point, it would have had added vitality.

Before his appearance for the banks in the *Banking Case* in 1947, in the High Court and the Privy Council, Barwick had effectively established himself as the leader of the Australian Bar. He had achieved this status largely by reason of his success in challenges to the validity of the regulations made under the *National Security Act 1939* (Cth) and his success in a number of important constitutional cases. In these and other cases he had won a reputation for his skill in statutory interpretation and his understanding of constitutional law. It was well-known that judges of the Supreme Court of New South Wales were so dazzled by the ingenuity and persuasiveness of his arguments that they would reserve judgment in an attempt to guard against the possibility that he was leading them into error.

This brings me to Barwick and the Privy Council. Barwick, by reason of his frequent and his successful appearances in that tribunal established for himself in England a reputation as an appellate advocate unequalled by any other Australian counsel and, I would think, unequalled by any counsel outside the United Kingdom. That he was selected as lead counsel for the banks in the *Banking Case* in the High Court and Privy Council was a clear recognition that he was the leading appellate counsel in this country. Barwick's success in the *Banking Case* was his greatest triumph as an advocate. It was the biggest and the most important case in his long career. The hearings in the High Court and the Privy Council each took more than thirty days. And the outcome, so far as it was based on s 92 of the Constitution, was always associated with Barwick's argument.

In *A Radical Tory*, his autobiography, written at the age of 92, when his eyesight was severely impaired as a result of the diabetes from which he suffered for many years, he records how he made an impression on the Privy Council in the course of argument in that case and how that led to his appearing frequently before that tribunal. Ultimately, this led to his developing close ties, as well as close friendship, with leading personalities in the United Kingdom judiciary and legal profession, including leaders of the English Bar.

It is a remarkable story. No Australian counsel has ever established such a close relationship with the English legal establishment. Despite his colonial background, he was highly regarded by English judges and lawyers familiar with his work. And his success in the Privy Council led to an increase in the number of Australian appeals taken to the Privy Council. His reputation with the English legal establishment later played a part in the 1966 change, on his initiative, in the recognition of the right to deliver a dissenting judgment in the Privy Council[11]. The Privy Council judgments had traditionally been unanimous.

His knowledge of, and friendship with, the members of the Privy Council was a critical element in his success. It was not simply that he had a receptive audience. He understood the members of the Privy Council as individuals and their way of thinking, just as he understood the justices of the High Court and the judges of the Supreme Court of New South Wales. But he was made to feel welcome by the Privy Council. He attached great importance to his assessment of a judge because it enabled him to pitch an argument which would most likely appeal to the judge. Of course, when a court like the High Court consists of judges with different views, he would present an argument in a way that was best calculated to appeal to a majority of the court. He liked Justice Starke because he was forthright but said of him:

> He was what you might describe as all wool and a yard wide. He was a very tough human being, very direct and hadn't much room for subtlety. He liked things to be very black and white.[12]

Starke would barge into the argument and in answering him you might lose one of the other judges. So, with Starke's assent, Barwick delayed answers to Starke J's questions until later in the argument. This was an unusual step because Barwick thought it important to answer questions on the run as they were put.

There were two cases in the Privy Council which he won which other counsel would not have won. This is perhaps another way of saying he should not have won these cases. Be this as it may, his success in these cases is testament to his skill as counsel.

The first of the cases was *Ellis v Leeder*[13] in which he appeared without fee. It was an appeal by leave from a unanimous decision of the High Court[14] allowing an appeal from the full court of the NSW Supreme Court dismissing an appeal from Sugerman J. Sugerman J had dismissed an application by the widow under the Testator's Family Maintenance and Guardianship Infants Act 1916-1938 (NSW) on the ground that the estate was 'insolvent and that it would be nothing more than a futility to give it to the widow'.

By his will the testator appointed his lady friend Miss Leeder executrix and trustee. Apart from bequeathing to the widow two items of furniture, he left to Miss Leeder the whole of his estate

which included the rest of the furniture and a cottage valued at £1,000. It was subject to a mortgage to secure a debt of about £887. Miss Leeder claimed that the testator owed her debts amounting to £497, supported by promissory notes. She had lived with him and his family for two years. After she left, the testator spent almost every weekend with her over sixteen years. The rest of his time he lived with his wife. He was an invalid pensioner. The full court of the Supreme Court, in dismissing the appeal by the widow from Sugerman J's decision, rejected an attempt by the widow to lead fresh evidence of a higher valuation of the cottage.

The High Court, in allowing the appeal, held that the application by the widow should have succeeded on the ground that the value of the cottage was more than £1,000 because the *Land Sales Control Act 1948* (NSW) which had restricted the value of the cottage to what it would have been in 1942, no longer applied to the cottage. A majority of the High Court also considered that the full court of the Supreme Court should not have rejected fresh evidence which showed that the cottage was worth well in excess of £1,000 and up to £4,500. The High Court awarded the widow the whole of the estate.

The Privy Council held that the fresh evidence should have been rejected. They mentioned that Sugerman J was the Land and Valuation Judge in NSW, with the implied suggestion, no doubt fostered by Barwick, that his view of the value of the cottage was sound. They held that the High Court should not have interfered with the exercise of discretion by Sugerman J and the full court. Their lordships pointed out that Sugerman J, who saw Miss Leeder give evidence, 'treated her as a witness of truth'[15]. They found that the High Court should not have disturbed his finding on that point and his finding that the debt she claimed was owing.[16]

The decision of the Privy Council was a substantial reverse for the High Court. It occurred in a case where one would not have expected the Privy Council to grant leave to appeal in the first place, but it resulted in the Privy Council reversing the High Court decision on two fundamental points: (a) overruling a trial judge's assessment of the credibility of a witness, a finding not disturbed by the intermediate appellate court; and (b) wrongful interference with a discretion exercised by the trial judge, not disturbed by the intermediate appellate court.

So, in the end, a triumph for Barwick the advocate. How did he manage to do it? The answer is to be found in his account of the case in *A Radical Tory*.[17] In the High Court judgment there appeared this remarkable and morally judgmental passage:

> The respondent '[Miss Leeder]' also produced some promissory notes, but they may be bound up with the illicit cohabitation between her and the deceased and their validity may be doubtful. Her debt is not one – the existence and validity of which had been admitted, nor had it been proved in a court of law. It could not therefore be assumed. No tenderness need be shown to a creditor whose debt grew out of a liaison between her and a married man …….[18]

This passage became a fairly prominent element in Barwick's argument in the leave application and the appeal. The passage excited critical comments during argument from their Lordships who were concerned to learn that adultery had not been an issue before Sugerman J. One Law Lord asked Barwick: 'By the way, is it the law that if I lend my mistress €100 I can never recover it?'

To which Barwick replied that he had no doubt it was not the law but the contrary appeared from the High Court judgment[19].

Barwick's account of the case illustrates his prodigious capacity to identify a chink in the judgment under challenge and to exploit it to the full. The passage was in a joint judgment to which Sir Owen Dixon was a party and it was widely acknowledged that the Privy Council greatly respected Sir Owen's views. Curiously, the Privy Council, in its reasons, referred to the joint judgment as a judgment of Sir Owen Dixon.

The second Privy Council case was *Bank of New South Wales v Laing*[20]. The bank had debited to Laing's current account with the bank, eight cheques amounting to almost £20,000 which Laing claimed bore a signature in his name which had been forged. Laing drew eight cheques corresponding in amount to the eight cheques said to have been forged. They were dishonoured by the bank on the ground that there were insufficient funds in Laing's account. He then sued to recover the amount of the cheques on what was known as a common money count for money lent to which the bank pleaded 'never indebted', hoping thereby to throw the onus on to Laing into the witness box where J W Shand QC (who led Asprey QC and me) was waiting to cross-examine him. New South Wales then still maintained the old common law form of pleading which had been abolished in England by the Judicature Act in 1875 and by similar statutes in other Australian jurisdictions. At the trial Lang's counsel simply tendered in evidence the bank's statement of account which showed that the cheques alleged to have been forged were debited to the account so that there were insufficient funds to meet the eight new cheques.

The trial judge and the full court of the Supreme Court found in favour of Laing on the ground that the defence of 'never indebted' did not allow the bank to establish that it had paid the amount of the cheques said to have been forged and that the bank should have filed a plea of payment.[21] Barwick advised the bank to appeal to the Privy Council. The appeal succeeded.

The Privy Council accepted Barwick's argument that under the common money count for money lent the plaintiff was required to establish that the debt was payable and this meant there must be sufficient money in the current account to meet the plaintiff's demand. The bank statement of account did not show such an amount standing to the plaintiff's credit. And under the plea of never indebted, the bank was able to raise the defence that the debt was not payable due to the absence of sufficient funds.

The Privy Council decision was received with some scepticism in New South Wales. It was thought that the English judges had little or no understanding of common law pleading and that Barwick had advised an appeal to the Privy Council instead of the High Court because the Privy Council was more likely to be receptive to his argument.

Laing v Bank of NSW was a good illustration of Barwick's radical use of the reply, a use for which he was renowned. The ability to make a devastating reply has always been the hallmark of an outstanding counsel. And this was certainly true of Barwick. It was said that he often trailed his coat in opening an appeal and presented his argument in reply. There is an element of exaggeration in this. Counsel is not allowed to split his or her case by presenting part of it in chief and part in reply. The reply must be confined to answering the argument presented by the respondent in the appeal. So, in *Laing v Bank of NSW*, Barwick, in opening the appeal, made only a fleeting reference to the pleading point and presented an argument directed to the nature and incidents of the contract between banker and customer on a current account, leaving the pleading point, what could be raised under the 'never indebted' plea, to his reply. In the argument as reported, in the *Appeal Cases*, it is noted that his opponent, in answer to Barwick's opening address said,'His argument only touched on the main point (the pleading point)'.[22]

His opponent was right.

Some thought that Barwick abused the right of reply by keeping back for reply matters which should have been argued in opening an appeal. There was an element of truth in this claim. Judges were then, and I suspect still are, reluctant to confine counsel's reply with its legitimate scope. This is because the line between answering the opponent's argument and expounding one's case is by no means always clear. In similar fashion, Barwick was inclined to exceed the limits of re-examination of a witness. Barwick would take any advantage that he could. He was always determined to win the case for the client. He wasn't there to help the court except in so far as it would help him win the case.

There are risks in saving your best points for reply, as Barwick himself recognised[23]. The court may come to an adverse conclusion before you make the points. So a decision to leave points for reply is a matter of sensitive judgment, not a decision to be taken lightly. And there is the risk that a judge will raise a point in the appellant's opening address when counsel may have no option but to deal with it there and then.

A notable characteristic of Barwick's advocacy was his desire to establish a dialogue with the bench. Some counsel do not welcome interruptions to their argument. Not so Barwick. He wanted judges to ask questions because he prided himself on his ability to answer immediately a question from the bench rather than ask permission to answer it later, a request that may signify to the court that counsel has difficulty in finding an answer. Barwick regarded the ability to answer a question immediately as a characteristic of Australian counsel generally, but not a characteristic of English counsel. He himself excelled in giving an immediate and persuasive answer. His capacity to do so sprang from a thorough understanding of his case and a capacity to put his point clearly, – if not succinctly. He liked talking rather than listening. It was said of him as a child that he never stopped talking. Age did not slow the flow of words.

He very rarely addressed the court from written notes. He might occasionally have notes by way of headings, only to remind him of the topics to be addressed. He wanted to be flexible. Addressing from a detailed written argument might compromise his flexibility and his capacity to answer an unexpected question or to make a delicate judgment on the run. Likewise, unlike other counsel, he did not read long passages from judgments in the law reports. He confined himself to the use of critical passages to support and elucidate his propositions. The cases authenticated his argument; they were not the argument.

Judges like to think that they are objective and that they do not give way to emotion. Barwick, however, recognised that all judges have in them an element of the juror and he was ever ready, when appropriate, to exploit this element in a judicial personality, not openly because that would provoke resistance, but more subtly by allusive references. The *Ellis v Leeder* High Court judgment and his argument before the Privy Council in that case is a good example.

I draw attention to an interview he gave in 1989 to *Bar News*, when he was aged 86, in which he discussed advocacy. All young barristers should read it, and some older ones as well. It virtually says all that needs to be said about advocacy and it gives examples drawn from his own extensive career.

As the interview makes clear, to be a successful barrister you need certain qualities. They include an agile and nimble mind, a very good memory, an ability to concentrate, an acute sense of relevance and a capacity to focus on the points at issue. You also need tenacity, the desire to win, as well as the capacity to

make sensitive judgments in the course of conducting the case, a capacity which may only come with experience. Barwick had all these qualities in abundance, the quickest mind I have known and, in particular, a determination to win the case.

One outstanding quality he had was to reduce the point at issue, no matter how complex, to a simplified and illustrative example. It was said that he had 'the gift of making the binomial theorem sound like the alphabet. He could make the dullest judge understand.'[24]

He used simplified examples to advance his own case and to destroy the opponent's case. And he would use those examples in response to questions from the bench.

Barwick's great strength was an appellate advocate. He was also an excellent trial lawyer. He appeared not only in the Liquor Commission prosecutions but also in the Petrov Royal Commission and in the Archibald portrait prize litigation involving the award of the prize to Dobell's portrait of Joshua Smith. His case was that the painting was a caricature, not a portrait. His case failed. Barwick did not regard himself as an outstanding cross-examiner in that he did not disintegrate a witness into a helpless wreck in the dramatic fashion of J W Shand QC and J W Smyth QC. But he was adept in eliciting admissions, contradictions and concessions (which went to the probabilities). He always cross-examined on points that would form part of his address. Though not given to excessive modesty, he under-rated himself as a cross-examiner.

Apart from his dedication to his career as an advocate, Barwick had a keen interest in the welfare of the bar and the need to secure long-term accommodation for its members. As president of the Bar Association he played the leading part in bringing about the lease of the land on which Wentworth Chambers now stands and in securing the finance and the subscriptions which enabled the construction of the building. In fact, he organised a group of leaders of the bar, including himself, to take up a shortfall in subscriptions. Barwick played a similar part in the acquisition of the old Selborne Chambers site and the construction on that site of the present Selborne Chambers. The fact is that, but for Barwick's vision and energy, the bar would not presently be occupying either Wentworth or Selborne Chambers. He also personally established the bar's strong connections with the four Inns of Court in London which, at his behest, provided four sets of stone replicas of their heraldic emblems, for incorporation in Wentworth Chambers.

I conclude my remarks by saying that not only was he the finest advocate I have heard, but that he also made a contribution to the life and fortunes of the New South Wales Bar which should never be forgotten.

Endnotes

1 * The Hon Sir Anthony Mason is a former Chief Justice of the High Court of Australia and a Non-Permanent Judge of the Hong Kong Court of Final Appeal.
2 Law Council of Australia, 'Law Council Saddened by Loss of Sir Garfield Barwick', Press Release, 15 July, 1997.
3 (1865) 5 B & S 840 [122 ER 1043].
4 *Howie v NSW Lawn Tennis Ground Ltd.* (1956) 95 CLR 132.
5 *Nelungaloo Pty Ltd v Commonwealth* (1948) 75 CLR 495.
6 *Nelungaloo Pty Ltd v Commonwealth* (1951) 81 CLR 144.
7 *Nelungaloo Pty Ltd v Commonwealth* (No.4) (1953) 88 CLR 529.
8 *Saffron v The Queen* (1953) 88 CLR 523.
9 (1960) 106 CLR 186.
10 *Television Corporation Ltd v Commonwealth* (1969) 123 CLR 648.
11 See Oliver Jones in ed.A Lynch, *Great Australian Dissents*, 2016, Cambridge Uni. Press, Ch.7.
12 '*Bar News* Interviews Sir Garfield Barwick'. NSW Bar Association *Bar News*. Summer 1989, 9.
13 (1952) 86 CLR 64.
14 (1951) 82 CLR 645.
15 (1952) 86 CLR at 73.
16 ibid.
17 *A Radical Tory* at pp.59-60.
18 82 CLR at 652.
19 *A Radical Tory* at 59-60.
20 [1954] AC 135.
21 *Laing v Bank of NSW* (1952) 54 SR (NSW) 41.
22 [1954] AC at 140.
23 '*Bar News* Interviews Sir Garfield Barwick', NSW Bar Association *Bar News*. Summer 1989, 9 at 15.
24 Judge George Amsberg, in D.Marr, 'Barwick', Allen and Unwin, 1980 at 17.