7 of 1977

IN THE PRIVY COUNCIL No. 36 of 1976

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT

OF SOUTH AUSTRALIA

B E T W E E N :

JAMES BARTON GILBERTSON Appellant

- and -

THE STATE OF SOUTH AUSTRALIA
and THE ATTORNEY GENERAL FOR
THE STATE OF SOUTH AUSTRALIA Respondents

RECORD OF PROCEEDINGS

Piper, Bakewell & Piper,
80 King William Street,
ADELAIDE, 5000.

Solicitors for the
Appellant

London Agents:

Blyth, Dutton, ~~Robins Hay~~ HOLLOWAY,
9 Lincoln's Inn Fields,
LONDON WC2.

Graham Clifton Prior,
33 Franklin Street,
ADELAIDE, 5000.

Solicitor for the
Respondents

London Agents:

Egerton, Sandler,
Summer & Co.,
17/18 Dover Street,
LONDON W1.

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THE STATE OF SOUTH AUSTRALIA Respondents

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I

NOTE: The formal order granting final leave to appeal to Her Majesty in Council will be forwarded with the requisite certificate and number of copies immediately it is made.

15. Order of the Full Court granting final leave to appeal to Her Majesty in Council — 10th December 1976 — 174A

PART II EXHIBITS

PART III DOCUMENTS INCLUDED IN THE RECORD BY CONSENT

PART IV DOCUMENTS IN THE RECORD NOT TRANSMITTED TO PRIVY COUNCIL OFFICE AND OMITTED FROM PRINTED RECORD BY CONSENT OF SOLICITORS

No.	Description of Document	Date
1.	Affidavit of J. B. Gilbertson	14th September 1976
2.	Summons for Immediate Relief	15th September 1976
3.	Appearance of both Defendants	17th September 1976
4.	Summons to Join Defendant	27th September 1976
5.	Affidavit of J. Guscott	27th September 1976
6.	Order of the Honourable Mr. Justice Walters referring Summons to Full Court	28th September 1976
7.	Motion for leave to appeal to Her Majesty in Council	3rd November 1976
8.	Associate's Certificates	5th November 1976

PART I

IN THE PRIVY COUNCIL No. 36 of 1976

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT
OF SOUTH AUSTRALIA

No. 1
Writ of
Summons

14th
September,
1976.

JAMES BARTON GILBERTSON Appellant

- and -

THE STATE OF SOUTH AUSTRALIA
and THE ATTORNEY GENERAL FOR
THE STATE OF SOUTH AUSTRALIA Respondents

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS DATED THE 14TH DAY
OF SEPTEMBER 1976

SOUTH AUSTRALIA
IN THE SUPREME COURT
No. 1499 of 1976

B E T W E E N:

JAMES BARTON GILBERTSON
Plaintiff

- and -

THE STATE OF SOUTH AUSTRALIA
and THE ATTORNEY GENERAL FOR
THE STATE OF SOUTH AUSTRALIA
Defendants

ELIZABETH the Second, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth.

No. 1

Writ of Summons

14th September 1976

TO: THE STATE OF SOUTH AUSTRALIA of C/- The Crown Solicitor, 33 Franklin Street, Adelaide in the State of South Australia.

AND TO: THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA of 33 Franklin Street, aforesaid.

We command you, that within eight (8) days after the Service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of South Australia in an action at the suit of

JAMES BARTON GILBERTSON of "Murtonga" via Millicent in the said State

and take notice in default of your doing the plaintiff may proceed therein, and judgment may be given in your absence.

L.S.

Witness, the Honourable John Jefferson Bray, Chief Justice of our said Supreme Court at Adelaide, the 14th day of September, 1976.

N.B. This Writ is to be served within twelve calendar months from the date hereof, or if renewed, within the period for which the same is renewed and not afterwards.

A defendant may appear to the writ by entering an appearance either personally or by Solicitor at the Master's Office, Supreme Court House, Victoria Square, Adelaide.

The Plaintiff's claim is with respect to the order of the Electoral Districts Boundaries Commission dated 5th August, 1976, and published in the South Australian Government Gazette of that date which order is subject to appeals in the Supreme Court of South Australia and purports in accordance with the Constitution Act 1934-1975 to set forth new electoral districts to be applied in the operation of the Electoral Act 1929-1973 for the House of Assembly; the Electoral Commissioner as defined in the said Electoral Act is responsible in accordance with the tenor of the said Electoral Act for the administration thereof and (as an agent or instrumentality of

the Crown in right of the State of South Australia within the meaning of the Crown Proceedings Act 1972-1975) will give effect to the said order subject to orders made upon appeal.

No. 1
Writ of Summons

14th September, 1976 (continued)

L.S.
14 Sep 1976

The plaintiff claims:-

1. A declaration -

(a) That the said order of the Electoral Districts Boundaries Commission is of no effect and does not take effect.

(b) That Sub-sections 2 and 7 of Section 86 of the Constitution Act 1934-1975 as contained in the Constitution Act Amendment Act (No. 5) 1975 and other the provisions of the said Constitution Act Amendment Act (No. 5) 1975 are void and inoperative by virtue of repugnancy to Imperial law in that they purport to confer upon the Supreme Court of South Australia a function which is inconsistent with the established judicial character of the Court.

2. Such further or other order as to the Court may seem fit.

This writ was issued by Piper, Bakewell & Piper of 80 King William Street, Adelaide in the said State whose address for service is 80 King William Street, Adelaide in the said State Solicitors for the said plaintiff, who resides at "Murtonga" via Millicent in the said State.

L.S.

No. 2

STATEMENT OF CLAIM AS AMENDED BY THE FULL COURT ON THE 5TH NOVEMBER, 1976 DATED THE 15TH DAY OF SEPTEMBER, 1976.

No. 2
Statement of Claim as amended by the Full Court on the 5th November 1976. Dated the 15th day of September 1976 (continued)

STATEMENT OF CLAIM

(Writ issued the 14th day of September, 1976)

1. The plaintiff resides at and at all relevant

No. 2
Statement of
Claim as
amended by the
Full Court on
the 5th November
1976. Dated the
15th day of
September, 1976
(continued)

times has resided at "Murtonga" via Millicent in the State of South Australia upon Section Number 11S Hundred of Rivoli Bay and he is a person whose name appears and at all relevant times has appeared as an elector on the electoral roll for the electoral district of Millicent of the House of Assembly in accordance with the Electoral Act 1929-1973.

2. The Governor of the State of South Australia with the advice and consent of the Parliament thereof has purported to enact an Act No. 122 of 1975 known as the "Constitution Act Amendment Act (No. 5) 1975".

3. The Electoral Districts Boundaries Commission purporting to be constituted and to be acting in accordance with the said Act No. 122 of 1975 has made an electoral redistribution for the House of Assembly by its order dated the 5th day of August, 1976, which the Commission has caused to be published in the South Australian Government Gazette of that date; the plaintiff will refer to the said order for the terms thereof.

4. Appeals by electors against the said order have been instituted in the South Australian Supreme Court on the 3rd day of September, 1976, in matters respectively numbered 1401, 1404 and 1406 of 1976.

5. The Electoral Commissioner, Mr. N.B. Douglass,
(a) purporting to be a member of the Electoral Districts Boundaries Commission was a party to a report by the said Commission dated the 5th day of August, 1976, published in the aforesaid Gazette and containing the said order. The plaintiff will refer to the said report for the tenor thereof.

(b) The said report includes the following statement:-

"The reports made by the present Commission do not require validating legislation: they become operative three months after publication of the

Commission's Order. An appeal is provided for in the Act. The appeal is to the Full Court of the Supreme Court of South Australia and is available to any elector. It must be brought within one month. If the appeals are dismissed the Order becomes operative three months thereafter".

(c) The Electoral Commissioner pursuant to the said Electoral Act (and in particular Section 6 (2)thereof) is responsible for the administration of such Act and in the course of such administration will give effect to the said order subject to orders made upon appeal and the plaintiff fears that he will be thereby prejudiced.

(d) The Electoral Commissioner is an agent or instrumentality of the Crown in right of the State of South Australia within the meaning of the Crown Proceedings Act 1972-1975.

6. Section 86 of the Constitution Act 1934-1975 (as inserted by the said Act Number 122 of 1975) includes upon its face the following provisions:-

"86 (1) The Commission shall cause an order making an electoral redistribution to be published in the Gazette.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

No. 2
Statement of Claim as amended by the Full Court on the 5th November 1976. Dated the 15th day of September, 1976 (continued)

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral re-distribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient."

7. (a) Pursuant to the Imperial Act 4 & 5 Wm. IV Ch. 95 there was established the Province of South Australia and a Legislative Council thereof with power as set forth in an Imperial Order in Council dated 23rd February, 1836, (including the Power to make ordinances and to constitute Courts in accordance with the tenor of such Order in Council); the plaintiff will refer to the terms of the said Order.

(b) In accordance with the Ordinance No. 5 of 1837 of the said Province enacted pursuant to such Order in Council there was in the said Province erected created constituted and established the Supreme Court of the Province of South Australia as a Court of Judicature which thing was confirmed by the Imperial Act 5 & 6 Victoria Ch. 61.

(c) The Supreme Court of the Province of South Australia (and afterwards called the Supreme Court of South Australia) erected created constituted and established as hereinbefore mentioned has been continued and still remains as a Court of Judicature and as an organ of Government of South Australia.

No. 2
Statement of Claim as amended by the Full Court on the 5th November, 1976. Dated the 15th day of September, 1976. (continued)

8. (a) The Constitution Act Amendment Act (No. 5) 1975 by its provisions (and in the circumstances which have occurred as set out in paragraph 4 hereof) purports to require the Supreme Court to deal with matters which are not justiciable and are beyond the power of the said Supreme Court and the functions to be performed upon the hearing of appeals under such Act (and in particular upon the hearing of the said appeals) are inconsistent with the functions of the said Supreme Court as a Supreme Court of the State of South Australia within the Commonwealth of Australia.

(b) The plaintiff in reliance upon the Imperial Act 28 & 29 Victoria Ch. 63 (Colonial Laws Validity Act, 1865) alleges that the Constitution Act Amendment Act (No. 5) 1975 in its purported operation as aforesaid is repugnant to the Imperial Act 4 & 5 Wm. IV Ch. 95 and things done pursuant thereto (as mentioned in paragraph 7 (b) hereof) and to the Imperial Act 5 & 6 Victoria Ch. 61 ~~and the Imperial Act 63 & 64 Victoria Ch. 12 (Commonwealth of Australia Constitution Act)~~ and to such extent is void and inoperative.

Amended this 5th day of November, 1976. By order of the Full Court dated 5th November, 1976.
Piper Bakewell & Piper.

9. The defendant the Attorney General for South Australia is sued as representative of the public interest herein.

10. The plaintiff claims:-

(1) A declaration -

(a) That the said order of the Electoral Districts Boundaries Commission is of no effect and does not take effect.

(b) That Sub-sections 2 and 7 of Section 86 of the Constitution Act 1934-1975 as contained in the Constitution Act Amendment Act (No. 5) 1975 and other the provisions of the said Constitution Act Amendment Act (No. 5) 1975 are void and inoperative by virtue of

No. 2
Statement of Claim as amended by the Full Court on the 5th November 1976. Dated the 15th day of September, 1976. (continued)

repugnancy to Imperial Law in that they purport to confer upon the Supreme Court of South Australia a function which is inconsistent with the established judicial character of the Court.

(2) Such further or other order as to the Court may seem fit.

THIS STATEMENT OF CLAIM is filed and delivered this 15th day of September, 1976, by Messrs. Piper, Bakewell & Piper of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 3
Order of the Honourable Mr. Justice Walters with directions Dated the 16th day of September, 1976.

No. 3

ORDER OF THE HONOURABLE MR. JUSTICE WALTERS WITH DIRECTIONS, DATED THE 16TH DAY OF SEPTEMBER, 1976.

BEFORE THE HONOURABLE MR. JUSTICE WALTERS IN CHAMBERS THURSDAY THE 16TH DAY OF SEPTEMBER, 1976.

UPON THE APPLICATION of the abovenamed plaintiff by summons dated the 15th day of September, 1976 UPON READING the affidavit of JAMES BARTON GILBERTSON filed herein on the 15th day of September 1976 UPON HEARING Mr. Williams Q.C. and Mr. Piper of counsel for the plaintiff and Mr. Fisher Q.C. and Mr. Cramond of counsel for the defendants AND treating the said summons as a summons for directions, the following directions are hereby given and IT IS ORDERED:-

1. That the defendants do forthwith enter an appearance in the action and do on or before the 20th day of September 1976 file and deliver their defence.

2. That the plaintiff do on or before the 24th day of September 1976 file and deliver his reply.

L.S.

No. 3
Order of the Honourable Mr. Justice Walters with directions Dated the 16th day of September, 1976
(continued)

3. That the questions of law arising on the pleadings be set down for hearing forthwith on the filing of the reply.

4. That the questions of law arising on the pleadings be referred to the Full Court of this Court and be argued before the Full Court at the sittings appointed to commence on the 4th day of October 1976.

5. That for the purpose of expediting and facilitating the determination of the issues between the parties, the times appointed by the Supreme Court Rules for the filing of a defence and reply respectively be abridged in order that the directions herein contained shall be carried into effect.

6. That copies of all documents which may be necessary to enable the Full Court to decide the questions of law arising on the pleadings be lodged in the Master's Office by the 28th day of September 1976.

7. That any one of the parties may be at liberty to apply in Chambers on short notice for any further or other directions as advised.

FIT for counsel.

(sgd.) J. Boehm
(L.S.) MASTER

L.S. THIS ORDER is filed by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 4

No. 4
Defence
(of both
defendants)

20th
September,
1976.

DEFENCE (OF BOTH DEFENDANTS)
DATED THE
20TH DAY OF SEPTEMBER, 1976

DEFENCE

1. The defendants admit the allegations of fact contained in paragraph 1 of the Statement of Claim.

2. As to paragraph 2 of the Statement of Claim the defendants say that the Governor of the State of South Australia with the advice and consent of the Parliament thereof has enacted an Act 122 of 1975 known as "The Constitution Act Amendment Act (No. 5) 1975".

3. The defendants admit any allegations of fact contained in paragraph 3 of the Statement of Claim. The defendants say that the Electoral Districts Boundaries Commission is lawfully constituted in accordance with "The Constitution Act Amendment Act (No. 5) 1975" and it has caused an order making an electoral re-distribution to be published in the Government Gazette on the 5th day of August, 1976.

4. The defendants admit the allegations of fact contained in paragraph 4 of the Statement of Claim.

5. As to paragraph 5 of the Statement of Claim, the defendants -

   (1) Admit the allegations of fact contained in sub-paragraph (a) thereof save and except that they say that Mr. N.B. Douglass is a member of the Electoral Districts Boundaries Commission.

No. 4

Defence (of both defendants) Dated the 20th day of September, 1976 (continued)

(2) Admit the allegations of fact contained in sub-paragraph (b) thereof.

(3) As to sub-paragraph (c) thereof the defendants deny that the plaintiff fears that he will be prejudiced by any administration of the Electoral Act by the Electoral Commissioner whether in giving effect to the order referred to or otherwise. The defendants say that the Electoral Commissioner is responsible for the administration of the Act and in administering the Act he will act according to law.

6. As to paragraphs 7 and 8 of the Statement of Claim, the defendants say -

(1) The Supreme Court of South Australia is lawfully erected, created, constituted and established.

(2) The Supreme Court of South Australia is lawfully required to deal with appeals under "The Constitution Act Amendment Act (No. 5) 1975".

(3) "The Constitution Act Amendment Act (No. 5) 1975" is not repugnant to any Imperial Act order or regulation extending to or in operation in the State.

The defendants will refer at the trial to the following Acts in addition to those referred to by the plaintiff in the Statement of Claim.

(1) The Imperial Act 13 and 14 Vict. Ch. 59

(2) Act No. 2 1855-1856

No. 4
Defence (of both defendants)
Dated the 20th day of September, 1976
(continued)

(3) Act No. 31 1855-1856

(4) The Constitution Act 1934-1975

(5) The Supreme Court Act 1935-1975.

THIS DEFENCE IS FILED AND DELIVERED the 20th day of September 1976 by G.C. PRIOR of 33 Franklin Street, Adelaide, Deputy Crown Solicitor and Solicitor for the defendants.

No. 5
Reply
Dated the 22nd day of September, 1976

No. 5

REPLY DATED THE 22ND DAY OF SEPTEMBER, 1976

REPLY

The plaintiff as and by way of raising a point of law says that the assertions of law contained in paragraphs 6(2) and (3) of the defence are wrong and the plaintiff otherwise joins issue with the defendants upon their defence.

THIS REPLY is filed and delivered this 22nd day of September, 1976 by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 6

No. 6
Reasons for Judgment of the Honourable the Chief Justice
3rd November 1976

REASONS FOR JUDGMENT OF THE HONOURABLE THE CHIEF JUSTICE

DELIVERED 3rd NOVEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

No. 1499 of 1976

Dates of Hearing: 4th, 5th, 6th, 7th and 8th October 1976

IN THE FULL COURT

Coram: Bray C.J., Walters, Zelling, Wells and Jacobs JJ.

J U D G M E N T of the Honourable the Chief Justice

Counsel for the Plaintiff:	Mr. H. C. Williams, Q.C., with Mr. A. H. Watson
Solicitors for the Plaintiff:	Piper, Bakewell & Piper
Counsel for the Defendants:	Mr. B. R. Cox, Q.C. Mr. F. R. Fisher, Q.C. with Mr. G. C. Prior
Solicitor for the Defendants:	Mr. G. C. Prior, Acting Crown Solicitor

Judgment No. 3131

No. 6

Reasons for Judgment of the Honourable the Chief Justice

3rd November 1976

(continued)

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

Full Court

Bray C.J.

In this action the plaintiff claims a declaration that an order of the Electoral Districts Boundaries Commission dated the 5th August 1976 does not take effect, and that subsecs. (2) and (7) of sec. 86 of the Constitution Act 1934-1975, as contained in the Constitution Act Amendment Act (No. 5) 1975, and other of the provisions of the said amending Act are void and inoperative by virtue of repugnancy to Imperial law in that they purport to confer on the Supreme Court of South Australia a function which is inconsistent with the established judicial character of the court.

By Act No. 122 of 1975 (hereinafter referred to as "the amending Act") Parliament amended the Constitution Act 1934-1975). Section 27 of the original Act was repealed and the section in the amending Act in substitution therefor provides that the House of Assembly shall consist of 47 members elected by the inhabitants of the State legally qualified to vote. Section 32 of the original Act was also repealed and a substituted section inserted by sec. 5 of the amending Act so as to provide that after an order of the Electoral Districts Boundaries Commission (hereinafter referred to as "the Commission") set up by Part V of the Act, dividing the State into House of Assembly districts becomes operative, and unless it has been superseded by a subsequent operative order of the Commission, then the State shall be divided into the number of House of Assembly districts described in the order. The order is to become operative upon the expiration of the prescribed period from its publication.

"Prescribed period" in relation to an order of the Commission is defined as follows :

"(a) where no appeal has been made against the order - the period of three months from the date of publication of the order;

or

(b) where an appeal has been made against the order - the period extending from the date of the publication of the order to the date falling three months after the day on which all appeals have been finally determined."

Part V, as I have said, sets up the Commission. It consists of a Judge of the Supreme Court who is to act as Chairman and the Electoral Commissioner and the Surveyor General of the State, or, in certain events, their substitutes (sec. 78). It is a permanent body. It is directed to make periodic electoral redistributions, the first to be commenced within 3 months after the commencement of the amending Act. By sec. 77 the distribution is to be made on the principle that the number of electors in each of the 47 districts is not to vary from the electoral quota by more than a tolerance of 10%. The electoral quota means the nearest integral number obtained by dividing the total number of House of Assembly electors at the relevant date by the number of electoral districts. It is unnecessary for the present purposes to define the meaning of these phrases more closely.

Section 83 provides that the Commission shall have regard to certain matters. I set them out:

"(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

No. 6

Reasons for Judgment of the Honourable the Chief Justice

3rd November 1976

(continued)

(b) the population of each proposed electoral district;

(c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing electoral districts;

(d) the topography of areas within which new electoral boundaries will be drawn;

(e) the feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly;

and

(f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution."

It further provides that it may have regard to any other matters that it thinks relevant.

By sec. 84 the Royal Commissions Act 1917 is made applicable to the Commission for certain purposes.

Then sec. 86 gives the right of appeal round which the present controversy turns. I set it out in full:

"86. (1) The Commission shall cause an order making an electoral redistribution to be published in the Gazette.

(2) Within one month of the publication of an order, any elector may, in

the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

(3) The Commission shall be the respondent to any appeal under this section.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(5) Where more than one appeal is instituted against the same order, every such appeal may be dealt with in the same proceedings.

(6) In any appeal under this section, any person having an interest in the proceedings may, upon application to the Court, be joined as a party to the proceedings.

(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.

(8) The validity of an order of the Commission shall not be called in question except in an appeal under this section.

(9) An appeal against an order of the Commission shall be set down for hearing by the Full Court as soon as practicable after the expiration of one month from the date of the order, and the appeal

No. 6

Reasons for Judgment of the Honourable the Chief Justice

3rd November 1976

(continued)

shall be heard and determined by the Full Court as a matter of urgency."

As I have said, the Commission did purport to make an order dated the 5th August 1976 dividing the State into electoral districts and purported appeals have been lodged in this court under the provisions of sec. 86 against that order.

Broadly speaking, the plaintiff claims that by reason of various imperial statutes and orders in Council, and by reason of action taken in South Australia in pursuance of the powers conferred by such sources, the Supreme Court is established as a court of judicature and cannot be given by South Australian legislation functions inappropriate to such a court and that the amending Act purports to give it such functions and is therefore void and inoperative. One consequence sought to be deduced from these premises was that the order of the Commission can never become operative, because the prescribed period referred to in sec. 32, which must first expire, can never expire, since the definition of that period is predicted on the possibility of an appeal which cannot legally be taken, or at least cannot legally be heard by the appellate body named in sec. 86, namely the Full Court.

These propositions were all denied by the defendants.

By order of Walters J. dated the 16th September 1976 the questions raised by the pleadings were referred to the Full Court and a Full Court specially constituted of five judges has sat to determine them.

The Commission, it will be noted, is not a party to the action. It applied to be joined as a defendant. That application, too, was referred to the Full Court. The plaintiff neither consented to nor opposed the joinder, but it was opposed by the Solicitor-General for the defendants. The point was argued first as a preliminary point. After we had heard Mr. Fisher, Q.C. for the Commission and the Solicitor-General in opposition, we intimated that the application would not be granted at that stage but that it would be stood over and could be renewed at a

later stage of the proceedings if thought fit and that, if necessary, we would hear Mr. Fisher as amicus curiae. In the course which events took the application was not renewed, nor was any request made that Mr. Fisher should be heard as amicus curiae, since by a somewhat Protean transformation he also appeared as one of the counsel for the defendants and delivered a separate argument to us in that capacity, an argument with which, in view of the conclusions to which I have come, I have not found it necessary to deal. It is necessary, however, that something should be said as to our reasons for refusing to grant the application at the outset of the proceedings and desirable that I should say it at this stage.

Much was said about the Commission's right to intervene. But the phrases "intervention" and "intervener" are not, as far as I can discover, to be found in the Rules of the Supreme Court except with regard to Admiralty actions, and Mr. Fisher finally conceded that he could claim no source for his alleged right to be joined in the proceedings other than Order 16 rule 11(2). It is desirable to set out rule 11(1) as well. The two rules read as follows :

> "11. (1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
>
> (2) The Court or a Judge may, at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court

No. 6

Reasons for Judgment of the Honourable the Chief Justice

3rd November 1976

(continued)

effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

It is settled, I think, that the right to apply for the joinder of additional parties is not restricted to the existing parties to the action but that the application can be made by the proposed additional party himself, re Fowler 142 L.T. 94, Haddrill v. South Australian Railways Commissioner & Anor. 1968 S.A.S.R. 78 at p. 80.

The equivalent English rule was considered in some detail by Devlin J., as he then was, in Amon v. Raphael Tuck & Sons Ltd. 1956 1 Q.B. 357. There the learned judge came to the conclusion that the main object of the rule was not to prevent multiplicity of actions, though it might often incidentally have that effect, but to enable to be made parties all those whom a Court of Equity before the Jurica-ture Act system would have regarded as necessary parties to the action, see at pp. 378-9. The limited wording of the rule was stressed by the House of Lords in Vandervell Trust Ltd. v. White 1971 A.C. 912. There Viscount Dilhorne said at pp. 935-6:

> "I cannot construe the language of the rule as meaning that a party can be added whenever it is just or convenient to do so. That could have been simply stated if the rule was intended to mean that. However wide an interpretation is given, it must be an interpretation of the language used. The rule does not give power to add a party whenever it is just or convenient to do so. It gives power to do so only if he ought to have been joined as a party or if his presence is necessary for the effectual and complete determination and adjudication upon all matters in dispute in the cause or matter".

It is true enough that it was decided in Amon's case that if the additional party's legal interests, as opposed to his purely commercial interests, would be affected by the result of the proceedings he could be joined,

c.f. Bradvica v. Radulovic 1975 V.R. 434. Much was said about the impolicy of making declarations of right which, though their terms might be thought to affect the rights of strangers to the action, would not bind them in law because they were not parties, c.f. London Passenger Transport Board v. Moscrop 1942 A.C. 332 per Viscount Maugham at p. 345.

However, it seems to me that this consideration was urged in the context of declarations of rights in personam where, no doubt, only the immediate parties would be bound by the declaration, not in that of declarations of rights in rem which would be binding on the world. No doubt if this court held that the amending Act was in whole or in part beyond the powers of the State Parliament that decision would be binding for all legal purposes on everyone until corrected by the High Court or the Privy Council or abrogated by Imperial legislation.

But here the primary attack was on the validity of sec. 86 giving the right of appeal to this court. With the constitutionality of that section it seems to me that the legal interests of the Commission are not directly concerned. If there is no valid right of appeal, it may well be that the Commission's decision would be unquestionable, though as against that the prerogative writs might well be applicable since sec. 86(8) would fall with the rest of the section. But in any event, the disappearance of the right of appeal could not adversely affect the Commission. I do not think it could ever be said that if the argument about the definition of the prescribed period succeeded so that the Commission's order, though good in itself, never became operative, the Commission's legal interests would be affected. It might well be, and probably is, that it is functus officio when it has made the order.

It might be different if this court were to hold that the appellate provisions could not be severed from the remainder of the scheme of electoral distribution so that the

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invalidity of the former involved the invalidity of the latter, including the existence of the Commission. It was for the reason, amongst others, that that might emerge as a real possibility that we preserved the right of the Commission to renew its application to be joined, a right which, as I have said, was not exercised.

However, at the stage at which the application was made the Commission did not, in my view, show that it was a party which ought to have been joined or whose presence before the court was necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved.

That makes it unnecessary for me to come to any conclusion on two questions, which I mention only to make it plain that I am not deciding anything about them.

The first is the claim of the Solicitor-General on behalf of the Attorney General of the State to the exclusive right to the representation in legal proceedings of the State and the Crown in right of the State and all its agencies and instrumentalities, c.f. The Crown Proceedings Act 1972 sec. 5 and the definition of "the Crown" in sec. 4 of that Act. Involved in that, of course, is the question whether the Commission is such an agency or instrumentality. There can be no doubt that the Attorney General is a proper defendant in such a proceeding as this, Dyson v. The Attorney General 1911 1 K.B. 410 or would have been before the Crown Proceedings Act. Equally, the State itself is a proper defendant under that Act, assuming the Commission to be an agency or instrumentality of the Crown. Whether it is and whether both the States and the Attorney General are proper defendants in proceedings such as the present or whether only one of them is and which one and whether they are or one of them is the only proper defendants or defendant in such proceedings are questions which can all be left to another day.

The next is that I have not overlooked and

I am impressed with the contention that it is for the plaintiff to say whom he wants to sue and that he ought not to be saddled with defendants whom he does not want to sue, c.f. Ricketts v. Clyne(1967)85W.N(N.S.W.) 522. Certainly if a stranger to the original action succeeds in getting himself added as a defendant against the will of the plaintiff, it might well be only on terms that he should not, if successful, be granted costs against the plaintiff. Here the question did not arise. Mr. Williams, Q.C. for the plaintiff did not oppose the joinder of the Commission though he did not consent to it.

Nor, in my view, is this an appropriate place in which to say anything about the right of the court to hear counsel as amicus curiae or the terms on which that will be done.

In order to make out a cause of action in the plaintiff Mr. Williams had to establish two propositions.

First, that by the combined effect of Imperial Acts and Orders in Council and the South Australian Ordinance, to which more particular reference will be made later, it is beyond the power of the South Australian Parliament to attach to the Supreme Court functions or duties inappropriate to a court of judicature.

Second, that the amending Act does attempt to attach such functions or duties to the court and to it as a court and not merely to the judges of it as individuals or personae designatae.

In my opinion he has failed to make out either proposition, but as it is sufficient if the first is untenable, and as that involves fundamental questions in relation to the constitutional law of the State and the power of the State legislature, and, indeed, raises controversies which I thought had been buried for ever in the grave of Mr. Justice Boothby, I propose to devote most of my attention to it.

It is necessary to go through the relevant

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legislation from 1834 to 1865 in chronological order, but I would begin by placing in prominent relief, though out of context, the first section of the Ordinance establishing this court, No. 5 of 1837. That section sets up, to use a neutral expression, "a Court of Judicature to be called the Supreme Court of the Province of South Australia". It is on those two words "of Judicature" that the whole argument for the plaintiff hangs. Those words it is said, in the events which have happened and because of the provisions of the English Statute of 1834, the English Order in Council of 1836, the English Act of 1842 and the English Colonial Laws Validity Act 1865, to all of which more detailed reference will have to be made later, stamp the court with an indelible character, so that for ever thereafter, so long as it exists, it is incapable of acquiring any jurisdiction or power or function inappropriate to a court of judicature except through Imperial legislation. I propose to trace now to the best of my ability the chain of reasoning which is said to lead to such a remarkable result and to have imposed a hitherto unsuspected fetter on the plenary power of the South Australian Parliament, or at least unsuspected for more than a century.

The Imperial Statute 4 & 5 Will. IV c.95 is called "An Act to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the Colonization and Government thereof". Section 1 gives the King power to erect one or more provinces in South Australia. Section 2 confers on him power by order in Council "to make, ordain, and, subject to such Conditions and Restrictions as to Him....shall seem meet, to authorise and empower any One or more Persons resident and being within any One of the said Provinces to make, ordain and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts, and appoint such Officers, and also such Chaplains and Clergymen of the Established Church of England or Scotland, and to impose and levy such Rates, Duties and Taxes, as may be necessary for the Peace, Order and good Government of His Majesty's Subjects and others within the said Province or Provinces;

provided that all such Orders, and all Laws and Ordinances so to be made as aforesaid, shall be laid before the King in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the Provisions of this Act."

Pursuant to the power so conferred an Order in Council issued on the 23rd February 1836. The King set up in effect a local council in South Australia, as he was authorised to do by the statute. He empowered the Governor, or other officer for the time being administering the government, the Judge or Chief Justice, Colonial Secretary, the Advocate General and the resident Commissioner (i.e. one of the Board of Commissioners referred to in the statute), or any three of them of whom the acting Governor was to be one, "to make, ordain and establish all such Laws, Institutions, or Ordinances and to constitute such Courts and appoint such Officers.....and to impose and levy such Rates, duties and Taxes as may be necessary or expedient for the peace, order and good Government of His Majesty's Subjects and others within the said Province". All laws, institutions and ordinances were to be forwarded to the King for his approbation or disallowance and it was provided that any of them or any part of any of them disallowed should not be enforced within the Province after the King's disallowance should have been made known there, and further that they were not in any wise to be contrary or repugnant to any of the provisions of the statute.

Then came the South Australian Ordinance No. 5 of 1837 to which I have referred earlier.

I set out in full the first section thereof, which, as was then the custom, bears no initial number itself but is clearly intended as the first section, since the next section begins with the figure II and all the subsequent sections are numbered consecutively thereafter:

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"Be it Enacted by His Excellency John Hindmarsh Knight of the Royal Hanoverian Guelphic Order Captain in the Royal Navy Governor and Commander-in-Chief of His Majesty's Province of South Australia and its Dependencies by and with the advice and consent of the Legislative Council thereof that there shall be and His Excellency the Governor by and with the like advice doth erect create constitute and establish a Court of Judicature to be called the Supreme Court of the Province of South Australia".

In my view the court there created was clearly created by a legislative act, but I will refer to that question in more detail later on.

The Ordinance goes on to say that the court shall be holden before a judge, to be called a Judge of the Supreme Court of the Province of South Australia. It refers to the appointment of Sir John Jeffcott to that office. Strangely enough the appointment of the judge appears to have preceded the institution of the court of which he was to be the judge. It provides for succession to the office and the tenure of it and clothes the court with common law and equitable jurisdiction and also with ecclesiastical jurisdiction with regard to probates and letters of administration. By sec. XVI there was set up the famous Court of Appeals consisting of the Council of the Province with the exception of the Advocate General or Crown Solicitor with power to hear appeals from judgments of the Supreme Court where £100 or more was involved. It is not suggested, however, that any peculiar sacrosanctity or inviolability is attached to that court. It is true that it was called a Court of Appeals, not a Court of Judicature.

The next relevant document is the Imperial Act of 1838 1 & 2 Vict. c.60 which amended the Act of 1834. In particular it provided that the power given to the King by the original Act to set up the local council with the powers previously mentioned be

repealed, but in lieu thereof it empowered the Queen by Order in Council to authorise and empower any three or more persons resident and being within the province to do most of the things that the previous Act had empowered their predecessors to do, with the exception of the appointment of officers and chaplains. I am not sure of the reason for this, unless it was the exclusion of chaplains, and, indeed, I am not sure of the effect of it. It was suggested by the Solicitor-General that in 1838, when there was no general statutory provision about the effect of repeals like that contained in sec. 16 of the present South Australian Acts Interpretation Act 1915 as amended, the effect of repealing a statute without any saving clause was to obliterate it so that it was deemed never to have existed except as to transactions past and closed, and he cited Craies on Statute Law 7th Ed. at p. 351 for this purpose.

However, I do not think that anything contained in the Act of 1838 obliterated the institution of this court by the Ordinance of 1837. In the first place the clause in question is not a repeal of the Act of 1834, only a revocation of certain of the powers granted by it, and I think, on the familiar analogy of a power of attorney, that anything validly done under those powers while they existed remained valid after they were revoked, until subsequently altered. Indeed, it was apparently always the law that anything validly done under a statute, or at least any right validly acquired thereunder, remained valid notwithstanding the repeal of the statute, see Craies above at p. 415, and this was the opinion of the Law Officers of the Crown at the time who advised that all laws made under the authority of the Act of 1834 remained in force notwithstanding the Act of 1838, see Forsyth's Cases and Opinions on Constitutional Law at p.9.

However, the point seems academic. The Imperial Act of 1842, 5 & 6 Vict. c.61, repeals both the Act of 1834 and the Act of 1838. But it contains a saving clause (sec. II) which reads as follows:

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"Provided always, and be it enacted, That all Laws and Ordinances heretofore passed under the Authority and in pursuance of the said recited Acts or either of them, and that all Things heretofore lawfully done in virtue of the said Acts or of either of them, shall hereafter be of the same Validity as if the said Acts had not been repealed."

(then follows an irrelevant exception).

Considerable importance was attached to this section in Mr. Williams' argument.

I next refer to the Imperial Act of 1850 entitled "An Act for the better Government of Her Majesty's Australian Colonies" (13 & 14 Vict. c.59). I should first state that the Act of 1842 had empowered the Queen to constitute a nominee Legislative Council for South Australia authorised to make laws for the peace, order and good government of the colony. Section VII of the Act of 1850 made it possible for that Legislative Council to establish within South Australia a new and partly elective Legislative Council. By sec. XIV the Governor with the advice and consent of that Legislative Council, was given authority to make laws for the peace, welfare and good government of the colony. And it was further made lawful for the Governor and the new Legislative Council to establish a new constitution with a bicameral legislature, either chamber of which could be wholly elective, and to vest in such new legislature all its existing powers and functions.

Pursuant to these powers the South Australian Act No. 2 of 1855-6 established the South Australian Parliament with two elected chambers, the legislative Council and the House of Assembly, in other words the same basic structure that still exists. That Parliament therefore acquired the power to make laws for the peace, welfare and good government of South Australia.

Nevertheless the exact scope of the powers

conferred on the new parliament, and, indeed, the exact scope of the powers enjoyed by its legislative predecessors, were for long in doubt. Controversy was heated. Many important decisions were given by this court. I do not propose to canvass in detail these controversies with which the name of Boothby J. will always be associated. Some of that learned judge's views were thought by the Law Officers of the Crown to be correct (such as, with certain limitations, his views on the question of repugnancy between South Australian legislation and the law of England, see Opinions on Imperial Constitutional Law, O'Connell & Riordan p.64): on others, his views were thought by them to be decidedly incorrect, such as his views on the lack of power of the South Australian Parliament to create courts of justice, (O'Connell & Riordan above p.64).

It was in the hope of setting these controversies finally at rest that the Imperial Parliament passed the Colonial Laws Validity Act of 1865 (28 & 29 Vict. c.63). a hope which proved vain in South Australia until the amotion of Boothby J., which the Privy Council in 1920 regretted had not even then been completely fulfilled, McCawley v. R. 1920 A.C. 691 at p.709 and which even in 1976 appears to be short of final achievement.

The Act dealt fully with the question of repugnancy. It endeavoured to make it plain that the only repugnancy to the law of England which would invalidate a colonial law was repugnancy to the provisions of some Imperial legislation, including subordinate legislation, extending to the colony. I set out secs. 2 and 3:

> "2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain

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absolutely void and inoperative.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid."

It is also desirable to set out sec. 5, relating inter alia to the power of colonial legislatures to establish courts:

"5. Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony."

Certain of the definitions in sec. 1 of the Act are relevant to the complete understanding of these provisions for relevant purposes:

"The terms 'legislature' and 'colonial legislature' shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

.....

The term 'colonial law' shall include laws made for any colony either by such legislature as aforesaid or by Her Majesty in Council:

An Act of Parliament, or any provision

thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:"

Nor should I overlook the special provision made for South Australia by sec. 7 preceded by a special preamble.

"And whereas doubts are entertained respecting the validity of certain Acts enacted or reputed to be enacted by the Legislature of South Australia: Be it further enacted as follows:

7. All laws or reputed laws enacted or purporting to have been enacted by the said legislature, or by persons or bodies of persons for the time being acting as such legislature, which have received the assent of Her Majesty in Council, or which have received the assent of the Governor of the said colony in the name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the date of such assent for all purposes whatever: Provided that nothing herein contained shall be deemed to give effect to any law or reputed law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful disallowance or repeal of any law.."

Against the background of these legislative documents the following argument is advanced.

The Ordinance of 1837 was an order or regulation made under the authority of an Imperial Act of Parliament, namely the Act of 1834. Its validity as such law or ordinance was confirmed by sec. 2 of the Act of 1842. Hence under sec. 2 of the Colonial Laws Validity Act any colonial law, i.e. any law of the South Australian Parliament, which is repugnant to that Ordinance is to the extent of the repugnancy absolutely void and inoperative. The amending Constitution Act of 1975 is, or at least sec. 86 is, or alternatively, at

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least subsecs.(2) and (7) of sec. 86 are, so repugnant. Therefore the Act or the section or the subsections are void and inoperative.

The consequences of this astounding argument are devastating indeed. Put in that absolute form it cannot be restricted to the first section of the Ordinance of 1837 or the institution of this court, but must extend to all the sections of the Ordinance. Not only that, it must extend to every other ordinance enacted in South Australia at least between 1837 and 1842. Nor do I see why it should not extend to subsequent ordinances passed by the Council set up by the Act of 1842. Those ordinances, too, were ultimately made under the authority of an Act of the Imperial Parliament. South Australian legislation passed prior to 1865 might indeed be validated by sec. 7 of the Colonial Laws Validity Act as reputed laws of the legislature of South Australia which received the assent of the Governor. But sec. 7 cannot protect legislation after 1865. On this argument South Australian legislation after 1865 would be more vulnerable than such legislation before it and the Colonial Laws Validity Act would be found to have restricted instead of to have enlarged the sphere of action of the South Australian Parliament. What was thought to be a charter of extended freedom would have turned out to be in important respects a grudging charter of oblivion for past licence but an implied command to refrain from any such licence in the future under threat of invalidity.

The early legislation in this State has, of course, been repealed almost in toto, even if some of it was subsequently re-enacted. It is impossible to estimate how many statutes are invalid and how many judgments of courts, dispositions of property or sentences of imprisonment or even of death may have been given, transacted or imposed without legal sanction if the argument is sound.

Mr. Williams resiled from these consequences and, indeed, he repudiated them, though I think that in rigorous logic they follow from his premises. He made several concessions,

not, I think, without peril to the main fabric of his argument.

First he said that by sec. 5 of the Colonial Laws Validity Act the South Australian Parliament had power to establish absolish and reconstitute courts of judicature and that gave it power, inter alia, not only to abolish this court but to add additional functions to it, so long as those functions were not inappropriate to a court of judicature. I am not at all sure that sec. 5 on one construction of it would not, as the Solicitor-General contended, in itself authorise the amending Act of 1975 as a whole and sec. 86 of it in particular. But because sec. 5 uses the phrase "courts of judicature" and because my conclusions are independent of the most restricted meaning which can be placed on that phrase, I lay no weight on the section and henceforward I ignore it. For similar reasons I forbear an analysis of the word "judicature".

Next, he drew a distinction between legislation and things done. Section 2 of the Act of 1842 validates, not only "all Laws and Ordinances heretofore passed" under the authority of the Act of 1834, but also "all Things heretofore lawfully done" by virtue of it. The setting up of the Supreme Court, he said, was a thing lawfully done by virtue of the Act of 1834 and, whatever may be said about the liability of laws and ordinances made under the Acts of 1834 or 1838 to be repealed or amended in futuro, a thing lawfully done cannot be undone, and as the court was instituted as a court of judicature so it must remain for all time to come so long as it exists, unless Imperial legislation intervenes. The South Australian Parliament can abolish it, but not turn it into something other than a court of judicature. It can kill it, but not violate its judicial virginity. He conceded, however, that functions incapable of being conferred on the court as a court could be nevertheless conferred on judges of the court as personae designatae, but sec. 86, he said, purports to give the right of appeal on a non-judicial topic to the Full Court as the Full Court of the Supreme Court and that

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cannot be done.

In my view the argument is completely untenable, both in its absolute and in its limited form.

In its most absolute form it appears to me to be the argument put by Boothby J. in Dawes v. Quarrell Pelham S.A.S.R. 1 where the majority of the court held that the local courts, purported to be set up by the Local Courts Act 1861, had no legal existence. Boothby J. said with reference to certain legislation passed between 1837 and 1842 at pp. 9-10.

> "All these Ordinances....are, however, in legal effect Imperial Statutes, having been confirmed by sec. 2 of 5 and 6 Vict., cap. 61, and as such are incapable of repeal by the Legislature of this province, unaided by Imperial legislation, for that would be repugnancy of the plainest nature - the Imperial Parliament providing one thing and the Colonial Legislature the very opposite."

That judgment, of course, was given before the passage of the Colonial Laws Validity Act, or at least, I assume, before its arrival in South Australia. The judgment of the majority in Dawes v. Quarrell must be taken to be wrong, both because of the provisions of sec. 7 of the Colonial Laws Validity Act and because the local Court of Appeals, though it did not reverse the judgment in Dawes v. Quarrell because the case was settled between the parties, reversed other judgments of the Supreme Court in which Dawes v. Quarrell was applied, see Hague, The Court of Appeals at p. 62, p. 66 and pp. 84-5.

That is a comparatively minor matter.

Next, in my view, sec. 2 of the Colonial Laws Validity Act cannot mean what Mr. Williams claims it to mean. The "order or regulation" made under authority of an Act of the Imperial Parliament or having in the

colony the force and effect of such an Act referred to in that section must mean an order or regulation made by the Imperial government. It cannot be read so as to include colonial legislation or colonial orders or regulations. It cannot have been intended to confer what would, apart from subsequent Imperial legislation, be immortality on the legislation or the executive acts of colonial governors in the foundation stages of a colony. Indeed, an Act or an Ordinance is, in my view, not an order or a regulation at all. But if such immortality is not to be conferred on legislation, still less could it have been intended to confer it on mere executive acts. It would, in my view, be absurd to think that the Imperial Parliament in 1865 intended, putting the matter in local terms, that anything done by Governor Hindmarsh in the form of legislation was to be subject to future repeal and amendment by the South Australian Parliament, but that anything done by him in the form of executive order was to be forever beyond its control. There could be no reason for subjecting the higher form of regulation to colonial legislative control but removing the lower from it.

Next, the argument fails to give effect to the plenary powers conferred on the Parliament of South Australia to make laws for the peace, welfare and good government of South Australia, (sec. 14 of the Act of 1850). Such grants have always been construed as conferring power of the widest nature. What the Privy Council said of the Indian legislation in Reg. v. Burah 3 A.C. 889 at pp. 904-5 is, in my view true, mutatis mutandis, of South Australian legislation. Their Lordships said:

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was

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intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

See also McCawley's case above at p.706 and at p. 712. I think the argument for the plaintiff does involve such a constructive enlargement.

Next, if there is any distinction between laws and ordinances lawfully made and things lawfully done, the institution of the court falls into the former category. It is contained in a legislative document called "An Act for the Establishment of a Court to be called the Supreme Court of the Province of South Australia". Again the words of the first section are words of enactment. The addition of the words "and with like advice does erect create constitute and establish" etc. cannot, in my view, convert the institution of the court from a legislative to an executive act. So, too, if the words "order or regulation made under authority of such Act of Parliament" in sec. 2 of the Colonial Laws Validity Act, contrary to my view, include local executive acts, they can hardly, as I have said, include local legislation. "Order" and "regulation" are

not appropriate phrases to include an Act or an Ordinance.

Stress was laid on the power given by the Act of 1834 to the nominees of William IV to constitute courts in addition to the power to make laws. It is, I think, easy to see why those words were added. Under the prerogative the King could in a new colony establish a court by letters patent. He could delegate that power to the Governor, see the dissenting judgment of Hanson C.J. in Dawes v. Quarrell above at pp. 14-17. It might have been thought convenient that the new South Australian authorities on the spot should have the option of creating courts either by legislation or by prerogative act. Clearly enough, in my view, the former course was chosen. It is not now possible to contend that the form of the Act of 1834 excluded power to make laws with regard to courts, or at least with regard to courts of judicature, from the general legislative power given to the royal nominees: it is not possible, apart from any other reason, because sec. 5 of the Colonial Laws Validity Act provides that a colonial legislature should be deemed always to have had the power in question and the royal nominees fall within the definition of "colonial legislature" in the Act.

And finally I am of opinion that even if the institution of the court was a thing done within the meaning of the Act of 1842 by executive act and not by legislation, there is no repugnancy within the meaning of sec. 2 of the Colonial Laws Validity Act. I think that for two reasons.

In the first place I think the argument confuses validity with perpetuity. A thing done, said Mr. Williams, cannot be undone. It cannot, in the sense that it cannot be made never to have occurred, though it can, by a legislature with power to do it, be made to be regarded as if it had never occurred. But a thing done can be undone, cancelled, abrogated or altered for the future.

If the institution of the court can be regarded as a thing done rather than a thing

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enacted, no doubt it was validly done and its validity was confirmed by sec. 2 of the Act of 1842. No doubt it would have been, and perhaps still is, beyond the competence of the South Australian Parliament to declare that the court was never validly in existence. That might well be repugnant to the Act of 1842.

But the Ordinance of 1837 only creates the court. It does not guarantee immutability, either in its existence or in any of its attributes. In my view no repugnancy would be created if the South Australian Parliament were to enact that the Supreme Court should no longer be a court of judicature, though, of course, it has not purported to do anything of the kind.

Secondly, a law is not, in my view, repugnant to another law enacting or directing that a court should be a court of judicature if, while taking nothing away from the court, it gives it an additional attribute not appropriate to a court of judicature. In In re Judiciary and Navigation Acts 29 C.L.R. 257 Higgins J. said at p. 271:

> "To say that Blackacre shall be vested in A (and in A only) does not carry as a corollary that Whiteacre shall not be vested in A; to say that the judicial power of the Commonwealth shall be vested in the High Court.. does not imply that no other jurisdiction, or power, shall be vested in the High Court.... This is surely obvious, on the mere form of words."

That was no doubt a dissenting judgment, and in the Boilermakers' case (Reg. v. Kirby & Ors. 94 C.L.R. 254, 1957 A.C. 288 sub nom Attorney General for Australia v. Reg. and Ors.) it was held that a court exercising the judicial power of the Commonwealth cannot be given both judicial and non-judicial functions unless the latter are merely ancillary or incidental to the exercise of the former. That is because of considerations peculiar to the Federal Constitution which, as I shall develop later, has nothing

to do with the present case. As a matter of general reasoning and logic the words of the learned judge which I have just quoted, if I may say so with respect, commend themselves to me.

In short, I think that the amending Act of 1975 must be regarded as an Act for the peace, welfare and good government of South Australia and within the plenary powers conferred on the South Australian Parliament. There is no express restriction on that power preventing its enactment. It is not, in my view, repugnant to any Imperial Act. The Ordinance of 1837, or the institution of the court, if contrary to my view, it was instituted otherwise than by legislation contained in that Ordinance, is not legislation or action of such a kind that the amending Act of 1975 would be void or inoperative if it were repugnant to it. It is not, in fact, repugnant to it. The Act is valid and operative and binding on us.

To put it another way, the South Australian courts are by and large subjected to the South Australian legislature, just as the English courts are subjected to the English legislature. Whatever qualifications may be necessary to this proposition by virtue of specific Imperial legislation or the federal Constitution or federal legislation do not touch the present case. This does not mean that I disregard the considerations dwelt on with such force and earnestness by Wells J. The independence of the courts and the decision of the matters that come before them in accordance with legal principle, and not in accordance with policy, expediency or arbitrary caprice, are vital to the liberty of the citizen and the well-being of the State. But I think the Constitution and the law of South Australia have left it, with confidence up to the present amply justified, to the wisdom and the good sense of Parliament not to violate these principles.

There are some other arguments which should be mentioned.

Mr. Williams endeavoured to derive aid from the decisions in relation to the judicial power of the Commonwealth. Certainly, as I have said,

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it is established that that power can only be exercised by a body established for the purpose of exercising it and that no non-judicial functions or duties not ancillary or incidental to judicial power can be given to it. But that is because the doctrine of separation of powers has, subject to important limitations (see, e.g. R. v. Federal Court of Bankruptcy and Anor: Ex parte Lowenstein 59 C.L.R. 556 and see the Boilermakers' case above 1957 A.C. 288 at pp. 311-12), been written into the Federal Constitution. That doctrine forms no fundamental part of the State Constitution, the Parliament of which is within its ambit as sovereign as the Imperial Parliament. It cannot pass laws repugnant to Imperial legislation extending to South Australia: it cannot pass laws having an extra-territorial effect insufficiently connected with South Australia: it is bound by the Federal Constitution and it cannot transcend the limits that places on it: a law respecting the constitution, powers or procedure of the legislature must be passed in due manner and form within the meaning of sec. 5 of the Colonial Laws Validity Act. As far as I know, that is all.

It is true that the Constitution Act is divided into parts and that the second, third and fourth parts are headed "The Legislature", "The Executive" and "The Judiciary" respectively. But when we look at Part IV headed "The Judiciary" we find that it only contains two sections dealing respectively with the tenure and the removal of judges of this court along the familiar lines of the Act of Settlement. The constitution of the court must be found elsewhere, indeed, in the Ordinance of 1837, the court established by which was expressly directed to be continued by the Ordinance of 1855-6 which repealed it, and by the present Supreme Court Act 1935 when the Ordinance of 1855-6 was in its turn repealed. There is no reference in the Constitution Act to the judicial power of the State being exercised by this court or by any court.

The policy of keeping legislative and executive powers separate from judicial power is, I think, generally recognised in this State as elsewhere. The importance of removing the

judges from any possibility of interference by the Executive is unquestionable and, in the history of this State, unquestioned, leaving aside the anomalous, ill-fated and now defunct Court of Appeals (which, however, if the appellant's argument is correct, might well be still existing in some sort of suspended animation). The doctrine of the separation of powers can, I think, legitimately be called in aid on questions of interpretation. But it does not create any restriction or fetter on legislative power. It has been so held by the Court of Appeal of New South Wales with regard to the constitution of New South Wales, Clyne v. East 68 S.R. (N.S.W.) 385, and by the Full Court of Western Australia with regard to the constitution of Western Australia, J.D. & W.G. Nicholas & Ors. v. The State of Western Australia 1972 W.A.R. 168. With these decisions I respectfully agree and their logic is equally applicable to South Australia.

Mr. Williams invoked sec. 73 of the Federal Constitution. That is the section giving to the High Court the jurisdiction to hear appeals from the Supreme Courts of the States. It may well be that such an appeal only lies from orders made in the exercise of the judicial functions of the Supreme Court. And if, indeed, sec. 86 of the amending Act confers a non-judicial function on this court, it may be that no appeal would lie to the High Court from our decision on the present electoral boundaries appeals. But the conclusion sought to be drawn seems to be that the State Parliament cannot give this court the power, or impose on it the duty, to make any order from which an appeal would not lie to the High Court under the Federal Constitution, though, I repeat it is conceded that it could confer such power and impose such duties on a judge or judges of this court not acting as the court. Comment seems to be needless. There is no doctrine that I know of under which appealability to the High Court is a condition precedent to the legal existence of any power of this court. The State Parliament cannot exclude appeals which the Federal Constitution allows. It is strange reasoning to infer from that that it cannot grant jurisdiction to this court to make orders

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from which the Constitution allows no appeals.

Nevertheless it is instructive to look at the cases in which the High Court has held that it had no jurisdiction to entertain appeals from certain orders or judges of State Supreme Courts (or even, on one view, from certain orders of State Full Courts, Webb v. Hanlon 61 C.L.R. 313 per Starke J. at p. 324, per McTiernan J, at p.335), because the order in question was made, not by a judge as a judge of the Supreme Court, but as a persona designata. Such cases are Holmes v. Angwin 4 C.L.R. 297 and Webb v. Hanlon above. Similar conclusions have been reached by the Privy Council, Theberge v. Laudry 2 A.C. 102, Moses v. Parker 1896 A.C. 245, Strickland v. Grima 1930 A.C. 285.

In cases of this kind it never seems to have occurred to anyone to suggest that if the functions in question were conferred on the Supreme Court as a court and not on the judges as individuals or personae designate, then the legislation was invalid under the law of the State. Yet most of the State Supreme Courts have been designated courts of judicature in their institutional documents. It appears from Holmes v. Angwin above, for example, that the Supreme Court of Western Australia had been designated as a court of judicature, see at p.303. In Moses v. Parker the Supreme Court of Tasmania had been given by a statute of 1858 power to decide disputes concerning lands as yet ungranted by the Crown. The Privy Council said it was clear to their Lordships "that these affairs have been placed in the hands of the judges, as persons from whom the best opinion may be obtained, and not as a court administering justice between litigants (p.249)." Yet the Supreme Court of Tasmania had been instituted pursuant to a statute of the Imperial Parliament authorising the King to constitute a Court of Judicature in Van Diemen's Land, see the preamble to the Tasmanian statute 2 Will. IV No. 1. I can find no hint that if the powers bestowed by the Act of 1858 had been given to the Supreme Court as a court and not to the judges as personae designatae the grant would have been void.

In Webb v. Hanlon above the Queensland statute in question set up an Election Tribunal consisting of a judge of the Supreme Court and gave a right of appeal to the Full Court. Latham C.J., see at p.319, and Evatt J., see at pp. 330-1, held that, though orders of the Election Tribunal were not orders of the Supreme Court from which an appeal lay to the High Court, the order of the Full Court on appeal was such an order. Yet there was no suggestion anywhere that, by reason of the Colonial Laws Validity Act or for any other reason, the section giving the appeal to the Full Court was void or inoperative. And in Kotsis v. Kotsis 122 C.L.R. 69 Barwick C.J. said at p.77 that he was of opinion that if a State were to change the constitution of its Supreme Court in a radical way so that it was no longer a Supreme Court within the meaning of the Federal Constitution its decisions might not be appealable to the High Court. But the learned Chief Justice nowhere suggested that any such radical change would be void or inoperative as a matter of State law.

Too much, I am aware, must not be based on the argument from silence. Still I find it hard to think that the ingenuity and learning of generations of Australian constitutional lawyers and judges would have overlooked for the past century so serious and fundamental a ground of legislative invalidity.

I should make some reference to Taylor v. The Attorney General of Queensland 23 C.L.R. 457 on which an argument was based by Mr. Williams. That case concerned a contention that certain Queensland legislation in relation to deadlocks between the Houses of Parliament and the abolition of the Legislative Council and the submission of the legislation in question to a referendum of the electors was invalid. The Colonial Laws Validity Act was canvassed. A suggestion was made by some of the judges that perhaps the Queensland Parliament could not change the representative character of the legislature, see per Isaacs J. at p. 475, per Gavan Duffy and Rich JJ. at p.477. If, however, that is so, it is because sec. 5 of the Colonial Laws Validity Act confers on a

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representative legislature the power to make laws respecting the constitution, powers and procedure of "such legislature" and the word "such" may well imply that the law in question must be such as to preserve the representative character of the legislature. There is nothing to correspond to this in the words of the Act in relation to courts. There is no provision that all colonial legislation relating to courts shall be such as to preserve them as courts of judicature and only such courts. The express power to establish courts of judicature is given without, in my view, any implied prohibition against constituting any other kind of court.

I think, therefore, that the amending Act of 1975 is perfectly valid and operative, even if it can rightly be characterised as Mr. Williams sought to characterise it. I do not therefore find it necessary to deal in detail with the contention that the functions which sec. 86 confers on the court are not judicial functions, and, since the construction of the Act may well be in issue on the hearing of the appeals, I would be reluctant to attempt to construe it closely in these proceedings, to which the appellants are not parties, unless it is strictly necessary to do so.

I will content myself with saying that, in my view, sec. 86 does confer judicial functions on this court. The appeal lies "on the ground that the order (of the Commission) has not been duly made in accordance with this Act". It seems to me that an enquiry like this is just the sort of enquiry which this court could have made by virtue of the prerogative writs if sec. 86 had never been enacted at all, subject to a possible argument that the prerogative writs did not lie against the Commission because of the nature of its functions. At any rate an enquiry as to whether a body set up by statute has acted in accordance with statutory criteria is an enquiry of a very familiar kind and one which calls clearly for the exercise of judicial power.

Nor do I think that Mr. Williams would have contended otherwise with any degree of

vigour but for the existence of the power given to the Full Court by subsec. (7)(b) to vary an order of the Commission. The exercise of this power, he said, might involve the court in drawing lines on maps and, indeed, redividing the State into 47 electoral districts. This, he said, was clearly not a judicial function. It was either an administrative or a legislative, one.

I fear that I am not prepared even to take this short step with him. Drawing lines on a map and dividing territories into areas is not, in my view, foreign to the exercise of judicial power. There was a time when in an appropriate case a commission would issue from a court in a partition action for the purpose of dividing the land amongst the co-owners, see, for example Agar v. Fairfax 17 Ves. 543 at p.554, 34 E.R. 206 at p.214. If a testator died leaving ten sons and directed his trustees to divide a large tract of land between them in accordance with certain criteria laid down by him and so that the allotments would not vary in area by more or less than a certain specified tolerance, and if any of the beneficiaries disputed the trustees' division on the ground that the criteria had not been adhered to, I think the court would adjudicate on the dispute and if necessary divide the land itself in an administration action. And it is interesting to note that even in America, where the doctrine of the separation of powers flourishes in vigour, the Supreme Court has not withheld its blessing from an order of a district court ordering reapportionment of the electoral divisions of a State when the existing state of apportionment violated the provisions of the Equal Protection clause in the 14th Amendment to the Constitution of the United States. Such an order was held to be a proper exercise of judicial power, Reynolds & Ors. v. Simms & Ors. 377 U.S. 533 at pp. 586-7.

I will not pursue these speculations. In view of the conclusions to which I have come it is unnecessary for me to consider whether the appeal given by sec. 86 is given to the Full Court as the Full Court of the Supreme Court of the State or to two, three or more

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judges of it as personae designatae. In certain events that question might have to receive an answer from a more authoritative source.

Nor do I find it necessary to discuss the question of severance, since I find the whole of the statute to be valid.

In my opinion the questions of law referred to us should be answered by saying that the statement of claim discloses no cause of action. Strictly speaking, perhaps, the matter should be referred back to Walters J. who referred it to this court, but I think we can take the responsibility of ordering that the action be dismissed and judgment entered in favour of the defendants, subject to any argument of counsel to the contrary.

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No.7 Reasons for Judgment of the Honourable Mr.Justice Walters

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DELIVERED 3rd NOVEMBER, 1976 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA.

No. 1499 of 1976

Dates of hearing: 4th, 5th, 6th, 7th & 8th October 1976

IN THE FULL COURT

Coram: Bray C.J., Walters, Zelling, Wells and Jacobs JJ.

J U D G M E N T of the Honourable Mr. Justice Walters.

Counsel for the Plaintiff: Mr. H.C. Williams, Q.C. with Mr. A.H. Watson

Solicitors for the Plaintiff: Piper, Bakewell & Piper

Counsel for the Defendants: Mr. B.R.Cox,Q.C. Mr.F.R.Fisher,Q.C. with Mr. G.C.Prior

Solicitors for the Defendants: Mr. G.C. Prior, Acting Crown Solicitor.

Judgment No. 3132

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA.

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Full Court

Walters J.

Broadly, the question for decision is whether the Parliament of South Australia has rightly exercised its legislative powers in assigning to the Full Court of the Supreme Court of this State the jurisdiction to hear an appeal from an order of the Electoral Districts Boundaries Commission established by the Constitution Act Amendment Act (No.5) 1975. The Supreme Court of South Australia, as by law established, is continued in virtue of sec. 6 of the Supreme Court Act 1935-1974 as the Superior Court of Record in this State. An instinctive reaction to the new legislation is that the jurisdiction thereby given to this Court is not one normally possessed by a Superior Court of Record, and that it might reasonably have been expected - to use a paraphrase of the words of Lord Greene M.R. in Johnson & Co. v. Minister of Health /1947/ 2 All E.R. 395, 399 - that any order of an Electoral Districts Boundaries Commission would have been defended in the Parliament and not in this Court. Be that as it may, the issue which arises is whether the vesting of the jurisdiction in the Court is within the constitutional power of the Parliament.

In limine of my reasons, it must be said that where in the adjudication of any particular case, the rights of a party are affected by legislation and a question arises as to the existence of constitutional restrictions upon the exercise of the legislative powers of the Parliament - in the case at bar, the exercise of legislative powers of the South Australian Parliament touching the relative spheres of

the Parliament and this Court - then the authority to decide the issue must (subject to any right of appeal) reside in this Court. What the Court has to do in the case in hand is to determine whether the impugned legislation is or is not within the legislative competence of the Parliament, which is virtually the same as adjudicating upon the validity of constitutionality of the legislation in question. Putting aside any consideration of the strict constitutional doctrine of separation of powers, this Court has the duty of guarding against legislation inconsistent with the constitutional powers of the Parliament. Though this may be an unwritten law and though it may involve the powers and authorities of the legislature, in the words of Sir Raymond Evershed M.R. in Harper v. Home Secretary /1955/ 1 ch. 238 at p 248, "the courts have never been reluctant or afraid to exercise their powers where they are satisfied that such powers reside in the Courts and that some one or more of the subjects of Her Majesty are in danger of finding their rights imperilled". Granted that the action presently before the Court involves a lis inter partes, it must be remembered that "there is a third party who is not present, viz., the public, and it is the function of the /Court/ to consider the rights and interests of the public" (Johnson & Co. v. Minister of Health (supra), per Lord Greene M.R., at p.399). The application of these principles to the instant case should excite no surprise, since the Supreme Court, standing as it does at the head of the judicial system of this State, is charged with the maintenance of law and justice and with the protection of the rights and interests of the public.

However, the argument for the plaintiff is that the scope and function of the Supreme Court of South Australia as an institution within the structure of the organs of government of this State, was established by Imperial law, and being so established, the function of the Court is judicial and that it is not within the competence of the Parliament of this State to invest the Court with a jurisdiction which is said to be an incident of, or an adjunct to, a legislative power which should ordinarily be exercised by Parliament itself.

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At once, I readily acknowledge the assistance of the valuable and able arguments addressed to this Court by counsel for the parties. But I do not think it necessary to refer in any great detail to the historical aspect of the establishment of the Supreme Court of South Australia. In my opinion, the Court owes its foundation, not immediately but mediately to the Imperial Act establishing the Province of South Australia, namely, the statute 4 and 5 Wm.IV(1834), cap. 95. Section 2 of the Act empowered "His Majesty, His Heirs and Successors, by any Order or Orders to be by Him or Them made with the Advice of His or Their Privy Council, to make, ordain, and, subject to such Conditions and Restrictions as to Him or Them shall seem meet, to authorize and empower any One or more Persons resident and being within any One of the said Provinces to make, ordain and establish all such Laws, Institutions or Ordinances, and to constitute such Courts, and appoint such Officers . . . . as may be necessary for the Peace, Order and good Government of His Majesty's Subjects and Others within the said Province . . . ." By the same section, it was provided that all such laws and ordinances, after the making thereof, were to be laid before the King in Council, and that the same were not to be contrary or repugnant to any of the provisions of the Act. By Order in Council dated 23rd February 1836, His Majesty, in exercise of the authority given to him by the Act 4 and 5 Wm. IV., and by letters patent erected and established the Province and, with the advice of His Privy Council, did order:

> "that the Governor for the time being of His Majesty's said Province of South Australia or the officer administering the Government thereof, the Judge or Chief Justice, Colonial Secretary, the Advocate General, and the resident Commissioner thereof for the time being, so long as they shall be respectively resident in the said Province, or any three of them, of whom the acting Governor to be one, shall have authority and power to make, ordain and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts, and appoint such Officers . . . .as may be necessary or expedient for the Peace, Order and good

> Government of His Majesty's Subjects and others within the said Province, which power and authority shall nevertheless be exercised subject to the following conditions and restrictions that is to say that all such Laws, Institutions and Ordinances as aforesaid shall by the said Governor or Officer administering the Government with all convenient expedition be transmitted to His Majesty for his approbation or disallowance through one of His Principal Secretaries of State and that the same or such part thereof if any as shall be disallowed shall not be in force within the said Province, after His Majesty's disallowance thereof shall be known in the said Province and that the same shall not in anywise be contrary or repugnant to any of the provisions of the said recited Act /4 and 5 Wm. IV., cap. 95/".

The Imperial Act and the Order in Council, so it seems to me, became the mediate source from which there flowed the power to erect the Supreme Court of the Province of South Australia, but it was the South Australian Ordinance No. 5 of 1837, passed in Council on 31st May 1837, which was the immediate instrument which erected, created, constituted and established the Supreme Court of South Australia as a Court of Judicature, with power and authority to exercise the jurisdictions vested in it by the Ordinance (Dawes v. Quarrell /1865/ Pelham 1, per Gwynne J. at p.5). It is the Court of Judicature so established which, by operation of successive consolidating and amending legislation continues up to this day as the Supreme Court of South Australia.

If I may express in another way what I have just stated, the Imperial Act of 1834 and the Order in Council of 23rd February 1836 did not directly constitute or establish the Supreme Court of South Australia, but, by those instruments, power to constitute or establish the Court was left to an "external authority",

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Namely, "the Governor for the time being of His Majesty's said Province of South Australia or the officer administering the Government thereof, the Judge or Chief Justice, Colonial Secretary, the Advocate General, and the resident Commissioner thereof for the time being, so long as they shall be respectively resident in the said Province, or any three of them". And if "by an act of legislation on the part of the external authority so trusted", the Supreme Court was established, then that "external authority", by enacting Ordinance No. 5 of 1837, acted as it was intended to act, that is to say within the scope of the power given to it by the Imperial Act and the Order in Council. The Ordinance No. 5 of 1837 became no less a valid law of the colony because it happened to be made, not by the Imperial Parliament, but by a body which was permitted by the Imperial Act and the Order in Council to legislate for the Province. "If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions" (The Queen v. Burah (1878) 3 App. Cas. 889, per Lord Selbourne, delivering the judgment of the Judicial Committee, at p. 905). Thus it was, in my opinion, that the Court of Judicature established in 1837 by act of legislation of the nominee Legislative Council became the progenitor of the existing Supreme Court of South Australia.

The South Australian Ordinance No. 5 of 1837 was laid before the King in Council and was not disallowed as, for example, were Ordinance No. 3 of 1837 - an Ordinance for the summary determination of disputes between masters and servants - and Ordinances No. 4 of 1837 - an Ordinance for the granting of licences, the regulating the sale of wine, beer and spirituous liquors etc. . . . In my opinion, therefore, once the Ordinance No. 5 of 1837 had passed the test of approbation or disallowance and had fulfilled the condition of non-repugnancy, it became an effective law

relating to the internal government of the Province, and the Court of Judicature established by the Ordinance came into being as an instrument for the peace, order and good government of the people within the Province. I do not regard the Ordinance as being contrary or repugnant to either the Imperial Act of 1834, or the Order in Council of 23rd February 1836.

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Although the Imperial statute 5 and 6 Vict., cap.61 (1842) (which repealed the Imperial statute 4 and 5 Wm. IV., cap. 95, and the intervening Imperial statute 1 and 2 Vict., cap.60) gave no other power to the legislature, whose establishment it authorized, than "to make Laws for the Peace, Order and good Government of the said Colony", it enacted that "all Laws and Ordinances heretofore passed under the Authority and in pursuance of the said recited Acts or either of them, and that all things done in virtue of the said Acts or either of them, shall hereafter be of the same Validity as if the said Acts had not been repealed". It seems to me that the 1842 Imperial Act had not the effect of withdrawing the power previously given by the 1834 Imperial Act and the 1836 Order in Council to constitute courts in the colony. Indeed, I think the effect of the 1842 Imperial Act was to give recognition to the establishment, by virtue of the South Australian Ordinance No. 5 of 1837, of a Supreme Court of Judicature as an organ for the better administration of the peace, order and good government within the colony. As I have already indicated, the Ordinance No. 5 of 1837 was a valid Act of the colonial legislature and was not contrary or repugnant to Imperial law; it established the Supreme Court of South Australia for the better administration of the laws of the colony. The Ordinance having been allowed by the King in Council, and not being contrary or repugnant to Imperial law, I cannot conceive that the Imperial Parliament should have permitted the creation, by the erection of the Supreme Court, of a judicial system which was to remain permanent or insusceptible or jurisdictional change, unless that system were altered by the superior power of the Imperial Parliament. I reject any notion

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that the Imperial Parliament intended to clothe the Court with a constitutional or jurisdictional immutability. In this connection, I respectfully adopt the observations of Hanson C.J. in Dawes v. Quarrell (supra), where the learned Chief Justice said (at pp.23-24):

> " It is, I think, somewhat singular that the Imperial Parliament should have deliberately deprived South Australia, under the pretence of providing for its better government, of the power which it had previously possessed of creating Courts of Justice, and thus of adopting its judicial system to the changing circumstances of a rapidly increasing community; and this is the more singular, in as much as the same Act /5 and 6 Vict., cap.61/ provides for the future establishment in the colony by the Royal prerogative of representative institutions, analogous to those which we now possess, and gives to the Legislature so authorized to be established precisely the same powers and no others, as those conferred upon the nominee Council which it establishes: so that it provides for the permanent existence in South Australia of Legislatures, which though in words empowered to make laws for the peace, order, and good government of the colony, would be nevertheless deprived of the power of erecting Courts, or making provision for the better administration of justice, leaving all these to be provided for by the authority of the Imperial Parliament".

It is clear from the observations of the learned Chief Justice in that case that he was unable to hold that power did not exist in the legislature of South Australia to make laws for the establishment of courts for the better administration of justice, and I am unable to see why the same line of reasoning should not apply to the enactment of laws with respect to the constitution and jurisdiction of the Supreme Court as then established.

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Next, I turn to the Imperial Statute 13 and 14 Vict., cap. 59 (1850) - "An Act for the better Government of Her Majesty's Australian Colonies". Section 25 of that Act provided for the continuance, so far as the same were consistent with that Act, of all laws and ordinances previously in force in the colony, subject to the power of the Governor and the Legislative Council of the Colony to repeal or vary them. And there was no repeal, by the legislature established in virtue of the Imperial Act of 1850 by the South Australia Constitution Act No. 2 of 1855-6, of Ordinance No. 5 of 1837 until the enactment of Act No. 31 of 1855-6, - "an Act to consolidate the several Ordinances relating to the Establishment of the Supreme Court of the Province of South Australia". By that Act, the Supreme Court, established as a "Court of Judicature" by Ordinance No. 5 of 1837 and "called the Supreme Court of the Province of South Australia", was continued. I feel unable to accept the notion that from 30th July 1842 (the date of assent to the Imperial Act 5 and 6 Vict., cap.60) until 24th October 1856 (the date of proclamation of Her Majesty's assent to the new Constitution - Act No. 2 of 1855-6), there was a withdrawal from the colonial legislature of the power to make laws in aid of the better administration of justice; to make laws for establishing courts within the colony; or to make laws altering the powers and jurisdiction of the Supreme Court.

I have considered the relevant provisions of the Colonial Laws Validity Act 1865. This Imperial legislation was a charter of colonial legislative independence, and it removed doubts as to the constitutional validity of laws which, up to that time, had been enacted by the colonial legislatures. The statute "affirmed in terms that every colonial Legislature should be deemed at all times to have had full powers" in matters of local legislation (McCawley v. The King /1920/A.C. 691, 711). And the Act empowered a colonial legislature, thereafter, to make provision intended to secure the peace, order and good government of the colony, even though an enactment of that legislature might

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have the effect of changing principles of English common law or of repealing or amending Imperial legislation (save legislation of a fundamental character kept alive by Imperial law) introduced into the colony on its foundation (Harris v. Davies (1885) 10 App.Cas. 279; Riel v. The Queen (1885) 10 App.Cas. 675). The extent of the concession by the Imperial Parliament, by its enactment of the Colonial Laws Validity Act, of constituent powers to colonial legislature is indicated in the following statement in Dicey's "Law of the Constitution", 9th ed. (1929), at p. 112:

> "When English statesmen gave Parliamentary government to the colonies, they almost as a matter of course bestowed upon colonial legislatures authority to deal with every law, whether constitutional or not, which affected the colony, subject of course to the proviso, rather implied than expressed, that this power should not be used in a way inconsistent with the supremacy of the British Parliament".

So far as sec. 86 of the Constitution Act Amendment Act (No.5) is concerned, I find no conflict with the laws of the Imperial Parliament which the colonial legislature had no authority to touch, so as to cause the section, or the amending Act itself, to fall by operation of sec. 2 of the Colonial Laws Validity Act. More specifically, I am unable to conclude that the recent amendment to the Constitution Act involves any repugnancy to the Imperial statute 4 and 5 Wm. IV., cap. 95 (1834), the Order in Council of 23rd February 1836, or the Imperial statute 5 and 6 Vict., cap.61 (1842).

Quite apart from the foregoing expression of the views that I entertain, it seems to me that if any doubt were to exist as to the constitutional validity of the Act now under consideration, one would apply the principle that the Court should always lean against holding an Act to be unconstitutional and that, wherever possible, it should construe the enactment in such a way as to maintain the validity of the legislation. "It is a well established principle of construction that Parliament is presumed to act within

its powers until the contrary is shown, and every intendment is in favour of its validity" (Jumbunna Coal Mine, No Liability v. Victorian Coal Miners' Association (1908) 6 C.L.R. 309 per Isaacs J., at p.368). And I add a quotation from the judgment of Barton J. in the same case, in which the learned judge said (at p.347):

> "Before we construe an enactment as transcending the powers of Parliament, it should appear that such a construction is the only reasonable one. The legislature are to be considered as conferring nothing but what they had a reasonable right to grant. 'A doubt of the constitutional validity of a Statute is never sufficient to warrant its being set aside:' Cooley, Principles of Constitutional Law, 3rd ed., p. 171, quoted by Thayer, 1 Const. Cases, 174".

My opinion that the legislation under challenge is within the constitutional power of the South Australian Parliament is supported by application of the presumption mentioned.

I have come to the conclusion that it is competent for Parliament to vest in the Full Court of the Supreme Court of this State the jurisdiction conferred by sec.86 of the Constitution Act Amendment Act (No.5) 1975; that to make this jurisdiction exercisable by the Supreme Court is not in conflict with the establishment and continuance of the Court as a Court of Judicature and as the Superior Court of Record in this State.

Whilst I have reached this conclusion. I feel constrained to add a reservation. Established as the Supreme Court is as a Court of Judicature, I would be loath to think that by any attempted legislative innovation, Parliament could destroy, or at least transform, the essential character and quality of the Court, both as a Court of Judicature and as the Superior Court of Record in this State. Undoubtedly, the legislature can change the structure and "collegiate and corporate capacity" of the Court; new jurisdictions may be conferred upon it and others removed from it. But it must be borne in mind that individually, and

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corporately, the members of the Court are Her Majesty's Judges", and that in virtue of his or her office, each one of them is vested with powers "ex Mandato regis" - discretionary prerogative powers which proceed from the judge of his or her own motion. A typical exemplification of prerogative power is provided by the exercise of the right and authority to respite sentence of death, even though the legislation enacted by the Parliament provides that in the case of sentence of death, "if no time for execution is expressed in the sentence, it shall take place on the twenty-eighth day after the day on which sentence was pronounced or ordered to be entered of record . . . ." (Criminal Law Consolidation Act 1935-1975, Sec. 303). There are other characteristics of the Court which pertain to its jurisdiction in representing the Crown as parens patriae. There is an inherent and supervisory jurisdiction which the Court possesses apart from any legislation; and for Parliament to interfere with, or to remove, any such jurisdiction would, as it seems to me, result in a fundamental change in the structure of one of the organs of government "through which the plenitude of the sovereign power" may be exercised.

Having regard to the decision to which I have come, I find it unnecessary to deal at any length with the arguments addressed to us on the concept of "judicial power". Whether it be a judicial or a non-judicial power which is given to the Court by sec.86 of the Constitution Act Amendment Act (No.5) 1975, I see no reason for rejecting the constitutionality of the amending statute.

Nor do I find it necessary to dwell on the doctrines of separation of powers of the organs of government. All I need say on this topic is that the Judges constituting the Supreme Court, though sometimes charged, as in the present case, with the duty of adjudicating on the legislative competence of the Parliament, do not pretend to stand on a level with the Legislature. But it must be kept in mind that the Judges of the Court are independent, and above the direct influence, of the Legislature and the Executive. In the same way as the Executive is a body distinct from the Legislature, the judicial body of the Supreme Court

exists independently of the Legislature and the Executive, in the sense that the Judges of which the Court is constituted hold their offices by a tenure supported by Part IV of the Constitution Act.

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Having regard to the conclusions that I have reached, it becomes unnecessary for me to canvass the argument dealing with the severability of portions of the disputed statute. And despite argument to the contrary I think the new jurisdiction given to the court is to be administered by the Full Court as a judicial body, in the exercise of its general powers and as an incident of its jurisdiction as the Superior Court of Record in this State. I am therefore unable to accept the argument that the jurisdiction is given to Judges of the Full Court as <u>personae designatae</u>.

For the foregoing reasons, it is my opinion that it is within the constitutional power of the South Australian Parliament, by ordinary enactment, to confer on the Full Court of the Supreme Court jurisdiction to hear an appeal from an order of the Electoral Districts Boundaries Commission, and that the Constitution Act Amendment Act (No.5) 1975 is not infected with any invalidity.

The plaintiff having failed on the questions of law arising on the pleadings, it is my opinion that the writ and the statement of claim disclose no cause of action and that the action should be dismissed, with costs to be taxed and paid by the plaintiff to the defendants. I would order that judgment be entered for the defendants accordingly.

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE ZELLING

DELIVERED 3rd NOVEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA

No. 1499 of 1976

Dates of Hearing: 4th, 5th, 6th, 7th & 8th October, 1976.

IN THE FULL COURT

Coram: Bray, C.J.,Walters, Zelling, Wells and Jacobs JJ.

J U D G M E N T of the Honourable Mr.Justice Zelling

Counsel for the Plaintiff: Mr. H.C. Williams,Q.C. with Mr. A.H. Watson

Solicitors for the Plaintiff: Piper, Bakewell & Piper

Counsel for the Defendants: Mr. B.R. Cox, Q.C. Mr. F.R. Fisher, Q.C. with Mr. G.C. Prior

Solicitors for the Defendants: Mr. G.C. Prior, Acting Crown Solicitor

Judgment No. 3133.

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA

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(Continued)

Full Court

Judgment of Zelling J. :

By Act 122 of 1975 the Parliament of South Australia amended the Constitution Act 1934 to insert (inter alia) a new code relating to electoral redistribution. The relevant Sections are Sections 4, 5 and 7 of the amending Act of 1975. By Section 4 the House of Assembly is to consist of forty-seven members elected by the inhabitants of the State legally qualified to vote. By Section 5 the State is to be divided into forty-seven House of Assembly electoral districts until the first election of members of the House of Assembly after the Electoral Districts Boundaries Commission has published an order dividing the State into House of Assembly electoral districts and (a) that order has become operative and (b) the order has not been superseded by a subsequent operative order of the Commission, in which case the State shall as from the day on which a general election of the members of the House of Assembly is next held, be divided into the appropriate number of House of Assembly electoral districts described in that order. The order of the Commission becomes operative upon the expiration of the prescribed period from the date of publication of the order. The prescribed period is: where no appeal has been made against the order, a period of three months from the date of the publication of the order or, where an appeal has been made, a period extending from the date of publication of the order to a date falling three months after the date on which all appeals have been finally determined.

Section 7 sets up a general code of electoral distribution by inserting a new Part V in the Act. It constitutes an Electoral Districts Boundaries Commission consisting of a Judge of the Supreme Court, the Electoral Commissioner under the Electoral Act 1929, and the Surveyor-General, or in each case a person appointed in lieu of either of those three

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persons. The Commission is a permanent Commission and its duty is to make electoral re-distributions, first within three months after the commencement of the 1975 amending Act, and also on the happening of two other contingencies neither of which matter for the purpose of these proceedings.

The basis of redistribution is set out in Section 77 in the new Part V. The matters to be taken into account for the purpose of making an electoral distribution are those set out in Section 83 of that Part. The Royal Commissions Act, by Section 84 applies to the proceedings of the Commission. The machinery for making representations is contained in Section 85.

It is common ground that a Commission consisting of the Honourable Mr. Justice Bright, a Judge of this Court, the Electoral Commissioner and the Surveyor General, did in fact sit as required by Part V and did make an order dividing the State into electoral districts as required by the sections to which I have referred. The challenge by the plaintiff is basically to Section 86 of the Act which reads as follows:-

"86. (1) The Commission shall cause an order making an electoral redistribution to be published in the Gazette.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

(3) The Commission shall be the respondent to any appeal under this section.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(5) Where more than one appeal is instituted against the same order, every such appeal may be dealt with in the same proceedings.

(6) In any appeal under this section, any person having an interest in the proceedings may, upon application to the Court, be joined as a party to the proceedings.

(7) On the hearing of an appeal under this Section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.

(8) The validity of an order of the Commission shall not be called in question except in an appeal under this section.

(9) An appeal against an order of the Commission shall be set down for hearing by the Full Court as soon as practicable after the expiration of one month from the date of the order, and the appeal shall be heard and determined by the Full Court as a matter of urgency."

The plaintiff's case is that Section 86 in particular is repugnant to the provisions of the Imperial statute 4 & 5 Will. IV c.95 which set up the State of South Australia; the 1836 Imperial Order in Council made pursuant to that Act; and the Imperial statute 5 & 6 Vict. c.61 which repealed the Statute of William IV but which included a section, to which I shall return, preserving the validity of things done prior to the enactment of the 1842 Act in the same manner as if the Act of 1834 and the subsequent Act of 1838 amending the 1834 Act had not been repealed. The plaintiff further argued that, if Section 86 is found to be repugnant to Imperial law and therefore invalid by the provisions of the Colonial Laws Validity Act 1865 (28 & 29 Vict. c.63), that it is impossible to sever Section 86 from the general scheme of the Part and that that whole part of the Act becomes inoperable

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and the scheme of electoral redistribution inserted by the 1975 Act must therefore fall.

The plaintiff Gilbertson is an elector of the State of South Australia for the electoral district of Millicent. There are three appeals, strictly in accordance with Section 86, which challenge the validity of the redistribution on the grounds stated in Section 86 (2) namely that the order of the Commission has not been duly made in accordance with the Act and we were told from the Bar table, and this was not disputed, that Gilbertson has intervened in two of these appeals although again it is common ground that one of the two appeals is to be or is likely to be withdrawn and will not come on for hearing before us. In any case the locus standi of the plaintiff Gilbertson to bring these proceedings was not challenged before us.

This present action is of course not pursuant to Section 86. It seeks a declaration, in the general jurisdiction of the Court, that Section 86 in particular of the 1975 Act is repugnant to Imperial law and therefore that the whole of Part V of the 1975 Act insofar as it sets up a scheme of electoral redistribution therefore falls to the ground. It is not itself an appeal under Section 86 and indeed it could not be so, because it denies the validity of that section. The basic argument for the plaintiff was that Section 86 and especially subsection (7) of that Section confers legislative power on the Full Supreme Court and that this is repugnant to the Imperial Acts and Order in Council above referred to which enabled the setting up of a Court of Judicature only.

A preliminary matter which fell to be decided by us was an application by Mr. Fisher, Q.C. on behalf of the Commission, for the Commission to be joined as a party to the action. The application was opposed by the Solicitor-General who appeared for the defendants the State of South Australia and the Attorney-General of the State. The plaintiff neither consented to the application nor opposed it. Mr. Fisher's application was made by summons which came on for hearing in Chambers before Mr. Justice Walters and the summons was referred by him by order made on 28th September, 1976 for the consideration of this Full Court. After

hearing Mr. Fisher and the Solicitor-General we decided that the application should be refused at that stage and gave leave to Mr. Fisher to renew his application later, but we intimated that in any event we would hear Mr. Fisher as amicus curiae. In fact Mr. Fisher did not renew the application and was heard as one of the counsel for the two defendants.

The first question therefore must be the construction of the 1975 Act and in particular Section 86. I desire to say no more about this aspect of the case than is necessary for the disposal of the fairly narrow question which is before us. The other appeals have yet to be heard and it is desirable that nothing should be said in this judgment which should in any way prejudice the position of those whose appeals are waiting to be heard unless what has to be said is absolutely necessary for the decision of this case.

It was common ground that prior to the enactment of the 1975 Constitution Act Amendment Act, the division of the State into electoral districts was done by legislation: sometimes by amendment of the current Constitution Act and sometimes by amendment of the Electoral Act but always as a legislative act of the Parliament of South Australia.

I turn then to the construction of Section 86. The scheme is as follows: The Commission causes the order to be published in the Gazette. Within one month of the publication of that order, an elector may appeal to the Full Court of the Supreme Court against that order on the ground that the order has not been duly made in accordance with the Act. The Commission is the respondent to any appeal under Section 86. Where an appeal has been instituted under that Section, the order does not take effect until the appeal has been disposed of. If there is more than one appeal all the appeals may be dealt with in the same proceedings. In any such appeal any person having an interest in the proceedings may, on application to the Court,

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be joined as a party to the proceedings. Then comes subsection (7) about which the real argument revolved. It reads:-

"(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal . . . . ".

It is obviously subclauses (a) and (b) of subsection (7) which raise the problem whether legislative power has been conferred on this Full Court. Subsection (b) does so directly. If we were to vary the order of the Electoral Commissioners we could, as I see it, draw the boundaries in different places from those where the Electoral Commission has drawn them. The Solicitor-General argued that we had power under Section 86 (7) to consider only the formal validity of the matters referred to in Sections 77, 82 and 83 and that we had no power beyond that. I do not agree with that. The power is a completely unfettered power to vary and there is nothing in any of the sections in Part V which suggests that we have anything other than the general power which the Full Court has on any appeal of varying the order of the Court or body appealed from and a power to vary must include a power to give different directions from those given by the Court or body appealed from.

Indirectly there is also legislative power involved in the quashing of the order and the consequent direction to make a fresh distribution. This was something which was done legislatively before the 1975 Act by an amendment proposed and carried to the Bill then before Parliament. That is not of itself conclusive, but in deciding to quash the order, we would have to come to the conclusion that the order appealed from was wrong and then do

what in the past Parliament would have done on an amendment proposed to the relevant bill when it was being considered in Parliament and order that the distribution be done differently, because it is unthinkable that the Electoral Commission would, after a direction from this Court that the matter had been dealt with wrongly the first time, do the same thing all over again. The Solicitor-General was inclined to argue that the Commission could do that notwithstanding the orders of this Court and the reasons given for judgment on any appeal, but if the power to quash and to order a fresh redistribution means anything, it must include a power in the Court to set the criteria under which its order is to be carried out by the Commission and those criteria are in fact legislative and not judicial. In each case both under (a) and under (b) we are making orders as to the future. We are not passing on accrued rights at all. Nor is there any analogy to dividing property to give effect to accrued rights. We are making orders which will give "rights" using that word in its widest sense, in futuro. We are not acting judicially nor are there any criteria by which our discretion is circumscribed. As is pointed out in Professor Howard's book on Australian Federal Law Second Edition pages 171-172: the wider the discretion conferred, the less likely it is that it is to be characterized as judicial and that whilst judicial power in fact quite frequently involves the exercise of discretions, discretion is compatible with judicial power only to the extent that it is incidental to the exercise of judicial power, and this is implicit in his description of it, that the discretion is controlled either by criteria set out in the statute itself or by those well known criteria for the exercise of a discretion which Courts have themselves evolved over a long period of time. Nothing of the sort appears here. Subsection (7) confers, in my opinion, legislative power upon the Full Court of this Court and the real question is: what is the consequence in law of that conferment or attempted conferment.

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It must be said at once that if the conferment is legally valid, it produces a most remarkable consequence, namely that Parliament is delegating part of its legislative power to this Full Court and that delegation cannot be recalled by Parliament as it presently exists but it can only be recalled by a new and different legislative body consisting of His Excellency the Governor on behalf of Her Majesty the Queen, the two Houses of Parliament and the electors voting at a referendum because this Part of this Act is by Section 88 entrenched in the way that I have just stated. The answer of the Solicitor-General generally speaking was: if Parliament regards it as being conducive to the peace, welfare and good government of South Australia to do that, then so be it. I immediately agree that questions of peace, welfare and good government are matters for Parliament and not for us. The real question is whether Parliament has the power to do it. If it has that power then without doubt the power is plenary but the threshold question which has first to be answered is: does it have the power, having regard to the operation of the Colonial Laws Validity Act 1865.

It is not disputed that any Court exercises certain legislative powers insofar as those legislative powers are ancillary to the working of the Court. The typical example of course is the making of rules of court. That is a very different thing from what is sought to be attempted here for there is no suggestion that the legislative power sought to be conferred by Part V of the 1975 Constitution Act Amendment Act is in any way ancillary to the judicial work of this Court. I have therefore to consider next what sort of Court was it that was set up pursuant to the 1834 Act as a result of which South Australia was founded and what limits, if any, were so placed upon this Court under the Imperial instruments to which I have referred.

By the Act 4 & 5 Will. IV c.95 s.2 it was enacted as follows:-

"And be it further enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, by any Order or Orders to be by Him or Them made with the Advice of His or Their Privy Council, to make, ordain, and, subject to such Conditions and Restrictions as to Him and Them shall seem meet to authorise and empower any One or more Persons resident and being within any One of the said Provinces to make, ordain, and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts, and appoint such Officers, and also such Chaplains and Clergymen of the Established Church of England or Scotland, and to impose and levy such Rates, Duties, and Taxes, as may be necessary for the Peace, Order, and good Government of His Majesty's Subjects and others within the said Province or Provinces; provided that all such Orders, and all Laws and Ordinances so to be made as aforesaid, shall be laid before the King in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the Provisions of this Act."

It will be noted that under Section 2 there are separate powers to make, ordain and establish laws institutions and ordinances, and to constitute courts. The second of the alternatives postulated in Section 2 of 4 & 5 Will. IV c.95 was in fact adopted in the Imperial Order in Council dated 23rd February, 1836: that is to say His Majesty King William IV by that Order in Council authorised or empowered the Governor of South Australia or the officer administering the Government, the Judge or Chief Justice, the Colonial Secretary, the Advocate-General and the Resident Commissioner or any three of them, of whom the Acting Governor was to be one, to exercise the powers contained in Section 2, and any exercise of those powers was not to be in any wise contrary or repugnant to any of the provisions of the Act 4 & 5 Will. IV c.95. Pursuant to the Imperial Acts and the Imperial Order in Council, a local Act whose long title

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is: An Act for the establishment of a Court to be called the Supreme Court of the Province of South Australia, was passed as 7 Will. IV No. 5. The relevant section is the first section:-

> "Be it Enacted by His Excellency John Hindmarsh Knight of the Royal Hanoverian Guelphic Order Captain in the Royal Navy Governor and Commander-in-Chief of His Majesty's Province of South Australia and its Dependencies by and with the advice and consent of the Legislative Council thereof that there shall be and His Excellency the Governor by and with the like advice doth erect create constitute and establish a Court of Judicature to be called the Supreme Court of the Province of South Australia."

The Imperial Act of 1834 was amended by the Act 1 & 2 Vict. c. 60, an Act to which I shall return later, which made the Governor also Resident Commissioner, to end the continual bickering which had occurred between Sir John Hindmarsh and Mr. Hurtle Fisher, the original Resident Commissioner. The Act of 1834 and the Act amending it were repealed by the Act 5 & 6 Vict. c. 61 which took away the powers of the Commissioners altogether and South Australia became Crown colony in the ordinary sense. Section 2 of 5 & 6 Vict. c.61 provided that "all laws and ordinances heretofore passed under the authority and in pursuance of the said recited Acts or either of them and that all things heretofore lawfully done in virtue of the said Acts or of either of them shall hereafter be of the same validity as if the Acts had not been repealed. . . . '. It will be noted that the words "of judicature" which occur in Section 1 of the local Act of 1837 do not appear in the Imperial Act of 1834 or the Imperial Order in Council of 1836. I shall show later in this judgment that that is immaterial and that where the word "Court" is used in the 1834 Act that it was understood, as it was understood by the draftsman of our Act of 1837, that where the Court to be created was a Supreme Court, it meant a Court of judicature.

The Royal prerogative to create colonial courts is dealt with in detail in an article by Dr. Enid Campbell in Volume 4 of the Sydney Law Review commencing at page 343. Courts could be

set up either by an exercise of the prerogative or, as is pointed out at page 353 of the article, usually by the Colonial Governor acting pursuant to instructions issued under the Royal sign manual. Leaving aside Courts of Admiralty and Vice-Admiralty, which stand and have always stood in a different position from all other Courts, many colonial assemblies also claimed the right to establish Courts for their respective colonies, but, as is correctly pointed out in the article, at no time before the cession of the thirteen American colonies did the Crown concede that the mere existence of a colonial Assembly, or the setting up of Courts by colonial legislation, diminished in any way the Royal Prerogative. I may add that I have not myself found any example of such a concession after 1776 and before 1834, except that in many cases the authority to create courts was given by Act of Parliament and to that extent, as always, the prerogative was pro tanto merged in the Act of Parliament. One of the difficulties of erecting courts purely under the prerogative was that the court so erected could exercise common law jurisdiction certainly: see In re the Lord Bishop of Natal 3 Moore's Privy Council (N.S.) 115 at 148 and possibly also function as a court of equity. Stephen, who was for a long time standing counsel to the Colonial Office, thought that the prerogative power included a power to create a court possessing equitable jurisdiction and his view was certainly supported by the Cosby controversy in the colony of New York: see an article Courts of Equity in the Province of New York: The Cosby Controversy 1732-1736 by Smith and Hershkowitz in (1972) 16 American Journal of Legal History 1 at 49. However this view is a little difficult to reconcile with the fact that the Governors of most colonies claimed that they had equitable jurisdiction conferred upon them by the fact that each was the possessor of the great seal of the colony and to that extent in the same position as the Lord

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Chancellor: see Dr. Campbell's article to which I have referred before at page 354. With this uncertainty it seemed better, no doubt, to give a specific power to constitute courts by statute rather than rely on the prerogative, particularly as in any case the prerogative right does not seem, generally speaking, to have covered testamentary causes jurisdiction or any similar jurisdiction although it is true that the first and second Charters of Justice in New South Wales which ultimately set up the Supreme Court of New South Wales and were constituted under the prerogative, by letters patent in 1787 and amending letters patent in 1814, in fact conferred a jurisdiction both in equity and in testamentary causes so that those who drew those charters must have thought that the prerogative power was wider than merely a power to create courts with jurisdiction at common law. However the prevailing uncertainty no doubt caused statutory powers to set up courts to be given, in New South Wales and Van Diemen's Land by the Imperial Acts of 1824 and 1828, in Western Australia by the Imperial Act of 1829 and in this State in 1834.

The position as to Courts is now clear because Section 5 of the Colonial Laws Validity Act 1865 declared that a colonial legislature has and always had full power to establish Courts and make provision for the administration of justice. However that was by no means certain in 1834 nor for many years afterwards, even though Section 5 is cast in declaratory form. Roberts-Wray in his book Commonwealth and Colonial Law page 464 suggests that in the absence of special reasons the statutory powers were redundant. It may well be thought that the draftsman of 4 & 5 Will IV c.95 considered that there were special reasons in the case of South Australia. A dyarchy was being set up of the Governor and the Colonial Commissioners and the conflicts relating to their powers began on ship-board on the way out to South Australia and continued and raged unabated after South Australia was officially proclaimed on 28th December, 1836. In these circumstances as the whole power of government was not vested in the Governor the draftsmen had every reason to think that he was dealing with a special case which required imperial legislation. Indeed, as is

recorded by Mr. R.M. Hague in his unpublished history of the judicial system in South Australia, deposited in the State Archives, at page 937, the argument as to how much could be done by local act and how much remained in any case within the competence of the prerogative, was debated in Council before the Act was passed. The Governor insisted that the Crown could not be divested without express words of its prerogative right of nominating Judges. Mr. Hague says:- "Gouger and Mann both thought the Governor was wrong but rather than have any trouble over it they were willing to leave the appointment to the Crown." I would have thought with respect that the Governor was right. The Crown had in fact nominated the first Judge, Sir John Jeffcott, and the words on which his opponents relied: namely a power in the Act and the Order in Council to appoint officers is quite inapplicable to the appointment of Judges of the Supreme Court. It is true that as Judges we are appointed to judicial office but we are not "officers" in the ordinary sense in which that word was and is used, and in my opinion was used in the Act of 1834, and Hindmarsh was right in the view which he took but it is interesting to see that this question as to the interlocking of the prerogative and the local ordinance goes back to the very earliest days of the colony. Overall it would appear that the comment made by Robert Gouger in 1838 in his book South Australia in 1837 at page 16 was well warranted:-

> "The government of the province is confided to a governor and council. Their powers as a council were originally unique, but, by a subsequent act of parliament, (i.e. 1 & 2 Vict. c.60) they have become similar to those obtaining in the same offices in other colonies, and consist in making laws, constituting courts, levying rates, duties, and taxes, and appointing officers for the peace, order, and good government of the province. Their duties are thus legislative and executive."

The fact is that the whole of the setting

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up of South Australia was experimental. It was to carry out, as is well known, the theories of land colonization propounded by Edward Gibbon Wakefield, which theories did not in the result turn out in practice to be as they appeared in theory, and even those who were among the supporters of the founding of South Australia regarded the experiment in perjorative terms. Thus, for example Molesworth, after whom a street in North Adelaide is named, in a debate in the House of Commons in March 1838 referred to the fact that in his opinion "the labouring rustics for whom Parliament has provided the means of settlement in South Australia" were unfit for self-government: see Colonial Self-Government: The British Experience 1759-1856 by J.M. Ward page 161.

It is against the whole of this background of experiment, and dyarchy, and of the views of those in England who thought they were setting up something which was philosophically and practically different from anything done before, that one has to see the whole of the original apparatus of government in South Australia, including the setting up of this Court. I have already pointed out that the 1834 Act and the Order in Council make a distinction between making ordaining and establishing laws institutions and ordinances and constituting courts. It may not be out of place to mention in this respect that the Acts of 1824 and 1828 relating to New South Wales and Van Dieman's Land similarly had separate powers relating to legislation for peace, order and good government, and to the setting up of courts, and that even after the grant of power to make legislation for peace, order and good government in 1824 and 1828 it was thought necessary to pass a further Imperial Act in 1839: 2 & 3 Vict. c.70 to empower the local legislatures of New South Wales and Van Dieman's Land to make provisions for the better administration of justice and for defining the constitution of courts of law and of equity and of juries within the colonies. The argument over juries of course had been one of long standing in New South Wales but the immediate necessity for the passing of the Act was the desire to establish circuit courts which one would have thought would have been within any grant of legislative power for peace, order and good government,

if it were not for the fact that the draftsman of the Imperial Act of 1839 obviously thought that the grant of power for peace, order and good government and the grant of powers, and very detailed powers at that in New South Wales and Van Diemen's Land in relation to courts, were two separate things: see Early Constitutional Development in Australia by A.C.V. Melbourne 2nd Edition (1963) page 200.

The Statute 4 & 5 Will. IV c.95 was, as I have said, amended in 1838 by the Imperial Act 1 & 2 Vict. c.60. The Solicitor-General in his argument placed some stress on the 1838 Act because that Act repeals the grant of powers and authorities to King William IV and makes a fresh grant of powers to Queen Victoria leaving out the power to appoint clergymen of the established Churches of England and Scotland. The Solicitor-General argued that it was because of this that the 1842 saving provision had to be inserted. The provisions of the 1838 Act were in fact submitted to the Attorney and Solicitor-General of the day, Campbell and Rolfe, afterwards Lord Campbell and Baron Rolfe respectively, and they advised that all laws made under the authority of the Act of William IV remained in force notwithstanding the Act of 1 Vict. c.60: see Forsyth: Cases and Opinions pages 8 and 9. There are two reasons for the correctness of that opinion. the first is that it is not the section of the Act of William IV that is repealed with the usual consequences of repeal but there is only a repeal and regrant of the powers under the section. That being so, the authorities on repeal on which the Solicitor-General relied do not have any application. A further reason is that where an Act repeals another in whole or in part and substitutes some provision or provisions in lieu of what is repealed, the repealed enactment continues in force until what is substituted comes into operation. That provision is now statutory but is stated in Maxwell on the Interpretation of Statutes 12th Edition page 19 to be declaratory of the common law and it is common ground that no new powers and authorities were exercised by Queen

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Victoria in lieu of those which had already been given to and exercised by King William IV under the Order in Council of 1836.

It is obvious that the body set up by 4 & 5 Will. IV c.95 s.2 and the Order in Council was in fact a body considered as an executive rather than a legislative body. Had it been regarded in the ordinary way as a legislative body then the words "and to impose and levy such rates, duties and taxes" would have been superfluous. The reason that they were inserted was that there had been a long standing argument over the prerogative power to impose rates, taxes and duties in New South Wales. This argument derived from a tract published by Jeremy Bentham in 1803 entitled "A Plea for the Constitution of New South Wales". The history of the matter from there on can be found in a paper by Dr.Campbell entitled "Prerogative Rule in New South Wales 1788-1823" contained in Volume 50 of the Journal of the Royal Australian Historical Society commencing at page 161 (the relevant passage is at page 162) and in another article in the same Journal Volume 49 Page 10 "The Foundation of New South Wales and the Inheritance of the Common Law" by Mr. Justice Else-Mitchell, in particular at pages 12-13. Ultimately an Imperial Act of indemnity to legalise what had been done by Governor Macquarie under the prerogative powers had to be passed as 59 Geo. III c. 114. In order to prevent any similar arguments in South Australia, the power was inserted to impose and levy rates, duties and taxes. Those powers would have been unnecessary if there had been a legislative assembly but they were things which could not be done under the prerogative. See also the book on Colonial Self-Government by Ward to which I have already referred at page 132. It is noteworthy that the Western Australian Act which is otherwise in pari materia with that in South Australia, namely 10 Geo.IV c.22, does not have the specific power relating to levying rates, duties and taxes. In fact the separation of the legislative and executive functions of councils was in a state of flux throughout all this period. It commenced with the Canada Act of 1791: 31 Geo. III c.31 s.38: see Ward (op. cit.) page 17 and was still continuing up

to 1834 and beyond.

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Mr. Williams argued that the setting up of the Supreme Court of South Australia pursuant to the Imperial legislation and the Order in Council, by the local Act 5 of 1837 constituted an act (i.e. something done) as well as an Act (i.e. a piece of legislation). I agree with him on the point although I do not think it necessary to rest my judgment entirely on the distinction. It is a distinction which has not been explored very much in the cases or the text writers. It was considered by Dr. Campbell in the paper on prerogative rule in New South Wales, to which I have referred, at page 178 where she says:-

> ". . . . one may ask: Can a hard and fast line be drawn between legislation and acts constituting courts of justice? Nowadays, the jurisdiction of courts, how they shall be constituted and how litigation before them shall be conducted, normally is laid down by statute and no one can deny that statutes are a form of legislation. Similarly, when the Crown in the exercise of its prerogative erects colonial courts of justice it scarcely can avoid laying down rules of law; the fact that in constituting Courts it may be strictly controlled in regard to the nature of the jurisdiction it may invest in a colonial court and the procedure by which litigation is to be conducted in no way detracts from the legislative character of the Crown's acts."

The matter was also considered by Hanson C.J. in his dissenting judgment in Dawes v. Quarrell (1865 O S.A.L.R. 1 at 20 where he says:-

> "They (i.e. the Acts to which he is referring which he says were in the same form as our Act 4 & 5 Will IV c.95) empower the Crown to make, or by Orders in Council to empower one or more person or persons to make laws for the peace, welfare, and good government of the place, to constitute Courts, and to appoint officers.

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The phraseology of the Act is significant. They do not confer upon the Crown any power but that of making laws - which power it did not possess, leaving the power of constituting Courts and of appointing officers to be exercised by the Crown by virtue of its prerogative; but they in effect provide that, if the power conferred is delegated by the Crown, the same person or persons who make the laws shall also constitute Courts and appoint officers."

Unfortunately Hanson C.J. does not at page 21 seem to see the difference between an act setting up a legislature which has only a power to pass laws for peace, welfare and good government and an act which gives such legislative powers but also gives a separate power to constitute Courts. The difference, as I will show later in this judgment, is significant. I agree with what he says at page 26 that it might have been better if the power to constitute Courts had been exercised in South Australia by letters patent, but that does not mean, as he seems to think, that because the power was exercised by this body with its delegated powers derived from the Order in Council that the act of setting up the Court might not be a different thing from the jurisdictions given to the Court by the local Act 5 of 1837 when it is obvious that those jurisdictions other than common law and possibly equity, would have to be given by some form of legislation: in other words he has not distinguished between the constitution of the Court and the jurisdiction of the Court, which are two quite different things. I agree with the statement of Gwynne J. in the same case at page 5 where he says that the Supreme Court was founded not immediately though mediately, on imperial legislation, though I would not draw from that statement some of the consequences which he draws with regard to the Local Courts Act and other Acts. I am concerned solely with the constitution of this Court and to that problem I must now turn.

When one asks oneself the question what is a "court", it is best to go back to what one might call the mental furniture of those who drew the Act of 1834 and who would be familiar with the various law dictionaries then in circulation. The law dictionaries - Cowell, Blount and Jacob for example, to take only three - all take the definition of "court" from a passage in Coke on

Littleton: "A Court is a place wherein justice is judicially administered (Co. Litt. 58)." See also Blackston's Commentaries Volume III page 23. They would also have been familiar with Coke's Institutes Volume 4 page 200 where commenting on two Statutes of the reign of Henry VIII and the erection of new courts says:-

> "Ordaineth, maketh, establisheth a court &c.7 Herein three things are to be observed. 1. That this new court could not be erected without an act of Parliament. 2. That when a new court is erected, it is necessary that the jurisdiction and authority of the court be certainly set downe. 3. That the court can have no other jurisdiction, then is expressed in the erection, for this new court cannot prescribe."

I refer also to a similar statement in Viner's Abridgement Volume 6 page 496 s.v. "Court": (F) 3.

There is no difficulty in finding from the Statutes and instruments of the time that when the word "court" was so used in relation to a superior Court such as our Supreme Court, that the draftsman of our Act 5 of 1837 was right in interpreting it as a court of judicature. All the precedents point the same way. It will be sufficient to refer to the use of the words "court of judicature", first in the case of Newfoundland to the Statutes 32 Geo. III c.46; 33 Geo. III c.76; 49 Geo. III c.27 and 5 Geo. IV c.67; secondly in the case of Norfolk Island to 34 Geo. III c. 45 and 35 Geo. III c. 18; thirdly in the case of New South Wales and Van Diemen's Land to Geo IV c.96 s.1 and 9 Geo. IV c. 83 s. 1 and fourthly to a later example in the case of Victoria: 13 and 14 Vict. c. 59 s. 28. I have no doubt that insofar as the word "Court" comprised the setting up of a Supreme Court, it meant a court of judicature. The word "Courts" is used in a general sense in the Act of 1834 because it comprised courts of various kinds, including courts of quarter

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and petty sessions, resident Magistrates' courts all of which might have administration as well as legal duties, and it also comprised in the event a court of appeals whose jurisdiction was solely appellate. In the case of the Supreme Court I have no doubt that its jurisdiction was solely that of a court of judicature. The stream cannot rise higher than its source and if the grant of Imperial power to set up a Supreme Court was to set up a Court of Judicature, nothing done or sought to be done by the local Act 4 of 1837 could alter that position and the Court as so constituted has simply been continued by the later Acts of 1855/6 and 1935.

The court of appeals has a different history, with which I shall deal later, deriving like that of the House of Lords originally from the fact that the council was the Upper House of the old representative Assemblies which existed in the thirteen American Colonies and in some of the West Indian islands. Whether or not in the context of South Australia the Local Court of Appeals was or was not a court of judicature is something which we are not called upon to decide in these proceedings. One other interesting matter which again it is not necessary to resolve in these proceedings is: what was the nature of the court which sat on May 13, 1837 prior to the assent to the local Act on May 31. It was a court of gaol delivery which was directed to be held by the Governor in Council but the only court with the jurisdiction to try the offences on which the prisoners were arraigned was without doubt the Supreme Court. It may well be that those who purported to set up the Court by the local Act assented to on May 31, 1837 merely held up the actual assent to the ordinance whilst Jeffcott had an opportunity to consider the terms of the projected ordinance and that the Court was thought of as being already in existence because of the grant of the judgeship to Jeffcott under his appointment in England. Again it is impossible to be dogmatic on the point. It is simply one of the interesting side lights on the establishment of justice in this State.

Some of the argument of the Solicitor-General and of Mr. Williams was directed, as it seemed to me, partly as if the matter before us was a separation of

powers point. There is no doubt in my mind that there is no such thing as a separation of powers in the strict sense in relation to the State Constitutions: see the judgment of the Court of Appeal of New South Wales in Clyne v. East (1967) 68 S.R. N.S.W. 385, and certainly not in the sense in which it was expounded by the Privy Council in Attorney-General for Australia v. The Queen and the Boilermakers' Society of Australia and Others /1957/A.C. 288. Similarly the Solicitor-General spent a large amount of time in his address arguing the grant of power to make laws for the peace, welfare and good government of South Australia under the Act 13 and 14 Vict. c. 59 and the plenitude of that power. Speaking for myself I certainly need no convincing that where the power exists it is plenary: see McCawley v. The King /1920/ A.C. 691. That, however, is not the question we have to decide here. We have to decide the threshold question as to whether or not there is any power at all because of the operation of Section 2 of the Colonial Laws Validity Act. The difference between these two points is well put in The Queen v. Burah /1878/ 3 App. Cas. 889 at 904-905 where Lord Selborne delivering the advice of the Privy Council said:-

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power,

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and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions." (The underlining is mine).

If the power exists it is plenary. If it does not exist then the question of plenitude of power does not matter. The fact is that Sections 2 and 5 of the Colonial Laws Validity Act have to be read together. Once Section 2 is removed Section 5 prevails. This is the exact distinction taken in the Privy Council between Nadan v. The King and Attorney-General for England and Attorney-General for Canada [1926] A.C. 482 and British Coal Corporation and Others v. The King [1935] A.C. 500. In the first of these two cases Section 2 along with the remainder of the Colonial Laws Validity Act still applied to Canada. By the time the British Coal Corporation case came on for argument the Statute of Westminster 22 Geo. v c.4 had been passed and Canada had adopted it, so the decision went the other way: see the judgment of Viscount Sankey L.C. delivering the advice of the Board at page 516. I should perhaps, while speaking of Nadan's case, deal with one small point to which the Solicitor-General referred namely that in McCawley v. The King in the High Court of Australia (1918) 26 C.L.R. 9 at 51 in the judgment of Isaacs and Rich JJ. they suggest that Section 2 only applies to British legislation later than the Colonial Laws Validity Act 1865. That must be wrong because in Nadan's case the repugnancy was to the Privy Council Acts 1833 and 1844 which are of course prior to the Colonial Laws Validity Act 1865. I conclude therefore that this Court can be given any other judicial jurisdiction which Parliament likes to confer on it, but to give it legislative functions unconnected with its judicial character is to give it something which is incompatible with its being a court and a fortiori a court of judicature and there is therefore a repugnancy between Section 86 and the Imperial Acts and Order in Council to which I have referred. The fact that the power given by the 1834 Imperial Act is facultative in form makes no difference to the operation of Section 2

of the Colonial Laws Validity Act. The power which produced repugnancy in Nadan's case (supra) was facultative in form but it nevertheless attracted the operation of Section 2 of the Colonial Laws Validity Act: see Roberts-Wray op. cit. page 398

As far as the court of the Governor in Council is concerned, the first of such Councils appears to have been set up in relation to Virginia in 1623-4: see Labaree: Royal Government in America page 401 and the history of its existence in the various colonies is contained in the same book at pages 403-411. As is pointed out in an article "The Courts in the American Colonies" by Surrency (1967) 11 American Journal of Legal History 347 at 367 an appeal from the trial courts to the Governor and his Council who constituted the Upper House of the Colonial Assemblies was analogous to an appeal in England from the Courts there to the House of Lords: see also Colonial Self-Government: Ward at page 17. Accordingly the Court of the Governor in Council was, and was envisaged as being, different in nature and kind from that of the Supreme Court. It had very limited powers. It did not have the power to enforce its own judgments or, it would seem, to compel the record to be sent up from the Court below. This is graphically explained in R.M. Hague: The Court of Appeal at pages 26-27 and again at page 49. However, as I have said, it is not necessary to decide in these proceedings the point as to whether or not it was a court of judicature.

There was a short lived Court of Appeals for New South Wales and Van Diemen's Land established by 4 Geo. IV c.96 s. 15 but it was abolished by the 1828 Act.

I turn then to Section 2 of the Colonial Laws Validity Act. The history of the passing of the Colonial Laws Validity Act and of the judgments of this Court and particularly of Mr. Justice Boothby which led to the passing of the Act of 1865, have been traversed many times and

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it is not necessary for me to do so again. The history of the matter is set out in detail in Imperial Control of Colonial Legislation 1813-1865 (1970) by Swinfen Chapter 11. Although the Colonial Laws Validity Act is set out in declaratory form, in fact on the earlier precedents Boothby J. was right more often than he was wrong: see for example Roberts-Wray: Commonwealth and Colonial Law page 402 and Labaree: Royal Government in America pages 30-31. The truth of the matter is that Boothby was looking back towards the older precedents which justified the stand he was taking, whereas the law changed very rapidly in the period between 1814 and 1865. As late as 1861 it is obvious that Rogers, Stephen's successor at the Colonial Office, feared that Parliament would be unwilling to accept the definition of repugnancy which later became Sections 2 and 3 of the Colonial Laws Validity Act: see Swinfen (op.cit.) page 181.

The repugnancy doctrine apparently derived originally from the examination of ordinances of guilds, fraternities and other incorporated bodies: see Smith: Appeals to the Privy Council from the American Plantations (1950 reprinted 1965) page 525, a doctrine which was first applied to plantation laws by the Statute 7 & 8 Will. III c.22 - see Smith (op. cit.) page 528. In addition to the Statute of William III there were various clauses which were inserted in the original charters for those of the thirteen colonies which were chartered colonies, requiring the laws to be enacted not to be "contrary to the Laws and Statutes of this our Realm of England . . . . and to be "agreeable to the laws of this our Realme of England . . . .": see British Statutes in American Law 1776-1826 by Brown and Blume (1964) pages 4 and 5.

However for our purposes the doctrine of repugnancy is now contained in Sections 2 and 3 of the Colonial Laws Validity Act 1865 28 & 29 Vict. c.63. Those sections read as follows:-

> "2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and

effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy,but not otherwise, be and remain absolutely void and inoperative.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid."

Accordingly what falls for decision here is whether the Constitution Act Amendment Act 1975 and in particular Section 86 and the conferral of legislative jurisdiction on the Full Court of this Court is repugnant to the Act of 1834 and the Order in Council of 1836 and the preservation of what was done under that Act and Order in Council by the Act of 1842.

In my opinion for the reasons set out above Section 86 which confers legislative power on this Court is repugnant to the Imperial legislation and Order in Council to which I have referred. In my opinion they set up or caused to be set up a Supreme Court which was a court of judicature, i.e. a body which was solely judicial. I have said "solely judicial", but of course it could have and does have administrative and legislative functions subordinate to and ancillary to its judicial functions. In my view it is repugnant to the concept of a court judicature to require it to act as a legislative body. So it was said by several Justices of the High Court in Taylor v. The Attorney General of Queensland (1917) 23 C.L.R. 457 that whilst it was possible to abolish one House of the Queensland Parliament, it was not possible to abolish the "representative character" of Parliament: see also Wynes' Legislative Executive and Judicial Powers in Australia 5th Edition (1976) page 535. The Colonial Secretary made the same point of the indelible character of a South Australian institution in considering a South Australian Ordinance 7 & 8 Vict. c. 10 dealing with lunatics, which provided for two of the visitors to be appointed by the Legislative Council. The Colonial Secretary held that that

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was bad because it devolved administrative duties on the Legislative Council contrary to the character of that body and the ordinance had to be amended by Ordinance 2 of 1847 deleting the offending sections before the ordinance was left to its operation on 18th October, 1847. So here the Acts and Order in Council, which I have referred to before, caused an indelible judicial character to be impressed on this court and the same observations apply mutatis mutandis. I agree immediately that the Colonial Laws Validity Act gives power to abolish the Court and to reconstitute it, but Parliament has not done either of those things here; no doubt because they are within the realm of legal rather than practical possibility. What is sought to be done here and what I have held cannot be done, is to attempt to direct a judicial body to exercise legislative functions unconnected with its judicial character and this is so whether one distinguishes an executive and prerogative "act" from the Legislative "Act" contained in 5 of 1837 or whether one considers that when the Supreme Court was being set up as a Court, it was in fact so set up as a Court of judicature and the whole history of the phrase and the meaning of "court" when referring to a superior Court such as this Court it means a judicial body and not a legislative one.

Both the Solicitor-General and Mr. Fisher tried to avoid this result by various other arguments which I must now note simply to dispose of them.

The first was that the appeal was not given to the Full Court of the Supreme Court as such but to personae designatae. This is simply not so on the wording of the section. "Full Court" in Section 86 has the same meaning as in the definition section (Section 5) of the Supreme Court Act 1935. In any case the conditions which have caused courts in other cases to regard special jurisdictions in this light do not apply here. In Holmes v. Angwin (1906) 4 C.L.R. 297 the Supreme Court of Western Australia was given, as a Judge of the Supreme Court has here, the jurisdiction of a Court of disputed returns: a jurisdiction which at one time was exercised by the House of Commons. Accordingly there was every reason to suppose that that Court was not exercising curial jurisdiction but was simply acting

in place of the jurisdiction which was not always or indeed often carried out judicially by the House of Commons and which led to the change of practice in England by the Election, Petitions and Corrupt Practices at Elections Act 1868: 31 and 32 Vict. c.125 which legislation was afterwards copied in the Australian States. Similar observations apply to the decision of the Privy Council in Theberge v. Loudry /1876/ 2 App. Cas. 102. The House of Commons had ever since the episode of Charles 1 and the Five Members maintained its sturdy independence of the Crown. It was obvious that the Quebec Legislative Assembly which inherited the powers of the House of Commons would similarly not submit to having its decisions called in question by the Crown. So when the jurisdiction to decide electoral disputes was transferred from the Legislative Assembly to the Superior Court for the Province of Quebec, the judgment of the Superior Court could not be called in question before the Queen in Council. That is not the case here. We are dealing with an Act of Parliament to which the Queen, or her representative the Governor, is one constituent part of the enacting process.

Similarly in Strickland v. Grima /1930/ A.C. 285, the right of a person to be or remain a member of the Senate or Legislative Assembly of Malta was to be referred to and decided by the Court of Appeal of Malta, and similar considerations applied: again the Privy Council refused to entertain an appeal, for similar reasons distinguishable from the case now before us.

So also there are Courts which are exercising judicial power, but exercising it according to special rules of evidence as in Moses (alias Moss) v. Parker /1896/ A.C. 245. There the Court was exercising judicial power and it was simply as if a new Evidence Act had been specially passed providing for specific rules of evidence, or more accurately the absence of them, in that specific type of case.

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The same observations apply to Courts giving advisory opinions as in Attorney-General for the Province of Ontario v. The Attorney-General for the Dominion of Canada /1912/ A.C. 571 Judges have been summoned to the House of Lords from time immemorial to advise the House on the law and although the custom seems to have fallen into desuetude since 1898 there is nothing to say that it could not be done again. The reason why advisory opinions cannot be given under the Constitution of the Commonwealth is that any such advisory opinion is not a "matter" within Chapter III of the Constitution: see In re the Judiciary Act 1903-1920 (1921) 29 C.L.R. 257. Again that is a concept specifically referring to the Commonwealth Constitution and is distinguishable from the position obtaining in a State. A similar observation applies to the decision in Minister for Works for the Government of Western Australia v. Civil & Civic Pty. Limited (1967) 116 C.L.R. 273, where the High Court refused to entertain an appeal from the Full Supreme Court of Western Australia on an advisory opinion in an arbitration.

Some of the Solicitor-General's comments are subject to the point that he was confusing administrative power and legislative power. A blend of administration and judicial powers has been known for centuries and that was what was at issue in Labor Relations Board of Saskatchewan v. John East Iron Works Limited /1949/ A.C. 134 as is shown by the judgment of Lord Simonds delivering the advice of the Board at page 154. So, too, in B. Johnston & Co. (Builders) Limited v. The Minister of Health /1947/ 2 All E.R. 395 the matter before the Court of Appeal was a confirmation of an order by a Minister and that was essentially an administrative act. The reference which the Solicitor-General made to the administrative duties of the old Court of Exchequer which are referred to in Holdsworth: History of English Law Volume XIII at page 561 is subject to the same comment that again we are dealing with administrative action and not legislative power.

I asked during the hearing for information as to any American cases which might have a bearing on the matter because it was common knowledge that American Courts have supervised elections and had ruled on the redistribution of electorates. The Solicitor-General was kind enough to supply us

with a list of cases bearing on this point. However, having read them all, they all turn on Section 1 paragraph (2) of the American Constitution and the Fourteenth Amendment to that Constitution and as these have no analgues in South Australia the cases do not in the event help, as I had hoped they might. For a discussion of the problems raised by these cases see an article: Federal Regulation of Congressional Elections in Northern Cities 1871-94 by Burke in 14 American Journal of Legal History page 17 which shows how far back this type of regulation goes in the United States and for current cases of the kind referred to by the Solicitor-General see an article Legislative Apportionment: The Contents of Pandora's Box and Beyond by Eimers in (1974) 1 Hastings Constitutional Law Quarterly 289.

The only other question argued was that of severability. It was argued both by the Solicitor-General and by Mr. Fisher that if Section 86 was repugnant to the 1834 and 1842 Statutes and the 1836 Order in Council, then it was severable and the remainder of the legislation could take effect according to its tenor and the result would be that the orders would simply be confirmed at the expiration of the period set out in the Act and there would be no right of appeal. I agree with them that Section 22a of the Acts Interpretation Act, inserted by Act No. 10 of 1945 Section 3, throws an onus on those who urge that severability is not possible to demonstrate that, because that Section enacts that every Act and every provision of an Act shall be construed so as not to exceed the legislative power of the State and any act or provision of an Act which but for the section would exceed the power of the State, shall nevertheless be a valid enactment to the extent to which it does not exceed that power. It is to be observed also that the Colonial Laws Validity Act itself deals with severance where it says that the Colonial law shall "to the extent of such repugnancy but not otherwise be and remain absolutely void and inoperative". I agree that the severability rules apply just as much to repugnancy under the Colonial Laws Validity Act as they do for example to

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inconsistency or any other ground of avoidance under the Commonwealth Constitution. We were especially pressed with the decision of the Privy Council in Hinds v. The Queen /1976/ 2 W.L.R. 366. However each Act turns on its own construction and I do not understand the Privy Council in that case to be laying down any new rules as to severability but only saying that in their opinion the impugned provisions of that Jamaican Act were severable. I take the tests as to severability to be those laid down by the High Court of Australia in the judgments of Dixon J. (as he then was) in Andrews v. Howell (1941) 65 C.L.R. 255 at 281 and in Bank of New South Wales v. The Commonwealth (1948) 76 C.L.R. 1 at 371: If what is left is a different plan or provision, or the unobjectionable part of the Act would operate differently on persons matters or things falling under it or in some other way would produce a different result, then severability is not open. In my opinion that is the position here. Section 32 (3) and Section 86 (4) of the 1975 Act both provide for the time when an order of the Commission shall take effect and it is obvious that the appeal procedure determines the date of taking effect of the order. Quite apart from this there is no doubt in my mind that the appeal procedure was an important factor in the whole of the newly enacted legislation. Interested parties were given an opportunity, first to scrutinize the order for one month after its publication which is the appeal time given, and then if they did not like what they saw, they had the right to challenge it. I am totally unable to say that if the appeal provisions had not been in the Act that the legislation would have operated in the same way and certainly not that it would have had the same effect. In my opinion the impugned provisions of the Act are inseverable. Alternatively it was argued that they could be read down so as to be within power as so read down. Again I find it impossible to do that.

For those reasons the plaintiff is entitled to judgment in this action.

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE WELLS

DELIVERED 3rd NOVEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

No. 1499 of 1976

Dates of Hearing: 4th, 5th, 6th, 7th & 8th October 1976

IN THE FULL COURT

Coram: Bray C.J., Walters, Zelling, Wells and Jacobs JJ.

J U D G M E N T of the Honourable Mr. Justice Wells

Counsel for the Plaintiff:	Mr. H.C. Williams, Q.C. with Mr. A.H. Watson
Solicitors for the Plaintiff:	Piper, Bakewell & Piper
Counsel for the Defendants:	Mr. B.R. Cox, Q.C. Mr. F.R. Fisher, Q.C. with Mr. G.C. Prior
Solicitor for the Defendants:	Mr. G.C. Prior, Acting Crown Solicitor

Judgment No. 3134

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3rd November 1976 (continued)

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND ANOR.

Full Court

Wells J.

Nomenclature

The statement of claim and the arguments of law in support of and in oppositon to it are based upon many Acts of legislatures, both Imperial and colonial or provincial, and other instruments of a legislative character; it will be convenient, therefore, to begin with the nomenclature to be used in this judgment. I intend to refer to the following Instruments by the short title appearing after each:

An Act of the Imperial Parliament (to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the Colonization and Government thereof) 4 & 5 Wm. IV. Ch. 95 (1834) - the 1834 Act (Imp.);

Imperial Order in Council of 23 February 1836 - the O.I.C. (1836);

An Act for the Establishment of a Court to be called the Supreme Court of the Province of South Australia: No. 5 of 1837 (S.A.) - the 1837 Ordinance (S.A.);

An Act of the Imperial Parliament (to amend the 1834 Act) 1 & 2 Victoriae C. 60 (1838) - the 1838 Act (Imp.);

An Act of the Imperial Parliament(to provide for the better government of South Australia) 5 & 6 Victoriae C. 61 (1842) - the 1842 Act (Imp.);

An Act of the Imperial Parliament (for the better government of Her Majesty's Australian Colonies)13 & 14 Victoriae C. 59 (1850) - the 1850 Act (Imp.);

An Act to establish a Constitution for South Australia, and to grant a Civil List to Her Majesty: No. 2 of 1855-6 (S.A.) - the 1856 Act (No.2)(S.A.);

An Act to consolidate the several Ordinances relating to the Establishment of the Supreme Court of the Province: No. 31 of 1855-6 (S.A.) - the 1856 Act (No. 31) (S.A.);

An Act of the Imperial Parliament(to remove Doubts as to the Validity of Colonial Laws) 28 & 29 Victoriae C. 63 (1865) - the C.L.V. Act 1865 (Imp.);

An Act of the Imperial Parliament (for further promoting the Revision of the Statute Law) 38 & 39 Victoriae C. 66 (1875) - the 1875 Act (Imp.);

The Constitution Act (S.A.) 1934-1972 - The Constitution Act;

The amendments to the Constitution Act (S.A.) Nos. 31/73, 51/73, 52/73, 45/74, 80/74, 59/75, 67/75 and 68/75 - (when mentioned collectively) the recent amendments; and

The amendment to the Constitution Act (S.A.) No. 122/75 - 1975 Amendment.

I shall also refer to the Electoral Districts Boundaries Commission as "the Commission" and to its Order of 5 August 1976 (mentioned below) as "the oppugned order".

The Writ and Statement of Claim.

The plaintiff's claim, endorsed on the Writ reads:

"The Plaintiff's claim is with respect to the order of the Electoral Districts Boundaries Commission dated 5th August 1976 and published in the South Australian Government Gazette of that date which order is subject to appeals in the Supreme Court of South Australia and purports in accordance with the Constitution Act 1934- 1975 to set forth new electoral districts to be applied in the operation of the Electoral Act 1929-1973 for the House of Assembly; the Electoral Commissioner as defined in the said

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Electoral Act is responsible in accordance with the tenor of the said Electoral Act for the administration thereof and (as an agent or instrumentality of the Crown in right of the State of South Australia within the meaning of the Crown Proceedings Act 1972-1975) will give effect to the said order subject to orders made upon appeal.

The plaintiff claims:-

1. A declaration -

(a) That the said order of the Electoral Districts Boundaries Commission is of no effect and does not take effect.

(b) That Sub-sections 2 and 7 of Section 86 of the Constitution Act 1934-1975 as contained in the Constitution Act Amendment Act (No. 5) 1975 and other the provisions of the said Constitution Act Amendment Act (No. 5) 1975 are void and inoperative by virtue of repugnancy to Imperial law in that they purport to confer upon the Supreme Court of South Australia a function which is inconsistent with the established judicial character of the Court.

2. Such further or other order as to the Court may seem fit".

Stripped of procedural and formal preliminaries, the plaintiff's claim is presented with greater particularity in paragraphs 6, 7, 8, 9, and 10:

"6. Section 86 of the Constitution Act 1934-1975 (as inserted by the said Number 122 of 1975) includes upon its face the following provisions:-

'86 (1) The Commission shall cause an order making an electoral redistribution to be published in the Gazette.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral re-distribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.'

7. (a) Pursuant to the Imperial Act 4 & 5 Wm. IV Ch. 95 there was established the Province of South Australia and a Legislative Council thereof with power as set forth in an Imperial Order in Council dated 23rd February 1836 (including the Power to make ordinances and to constitute Courts

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in accordance with the tenor of such Order in Council); the plaintiff will refer to the terms of the said Order.

(b) In accordance with the Ordinance No. 5 of 1837 of the said Province enacted pursuant to such Order in Council there was in the said Province erected created constituted and established the Supreme Court of the Province of South Australia as a Court of Judicature which thing was confirmed by the Imperial Act 5 & 6 Victoria Ch. 61.

(c) The Supreme Court of the Province of South Australia (and afterwards called the Supreme Court of South Australia) erected created constituted and established as hereinbefore mentioned has been continued and still remains as a Court of Judicature and as an organ of Government of South Australia.

8. (a) The Constitution Act Amendment Act (No. 5) 1975 by its provisions (and in the circumstances which have occurred as set out in paragraph 4 hereof) purports to require the Supreme Court to deal with matters which are not justiciable and are beyond the power of the said Supreme Court and the functions to be performed upon the hearing of appeals under such Act (and in particular upon the hearing of the said appeals) are inconsistent with the functions of the said Supreme Court as a Supreme Court of the State of South Australia within the Commonwealth of Australia.

(b) The plaintiff in reliance upon the Imperial Act 28 & 29 Victoria Ch. 63 (Colonial Laws Validity Act 1865) alleges that the Constitution Act Amendment Act (No. 5) 1975 in its purported operation as aforesaid is repugnant to the Imperial Act 4 & 5 Wm. IV Ch. 95 and things done pursuant thereto (as mentioned in paragraph

7 (b) hereof) and to the Imperial Act 5 & 6 Victoria Ch. 61 and the Imperial Act 63 & 64 Victoria Ch. 12 (Commonwealth of Australia Constitution Act) and to such extent is void and inoperative.

9. The defendant the Attorney General for South Australia is sued as representative of the public interest herein.

10. (Repeats second part of Endorsement on Writ)".

In sum, the plaintiff claims a declaration that the 1975 Amendment, and the oppugned Order, are, by virtue of the 1865 Act (Imp.), to all intents and purposes, void and of no effect, because the former is repugnant to Imperial Law intended to extend, and extending, to this province. No other ground is put forward for contending that the oppugned Order is invalid.

The plaintiff's contentions in summary form.

The arguments upon which Mr. Williams founded the plaintiff's claim may, I hope without error, be summarized in this way.

Sections 2 and 3 of the C.L.V. Act 1865 (Imp.) provide that -

"2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

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3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order or regulation as aforesaid."

Imperial Acts of Parliament that answer the description contained in the passage "extending to the colony to which such law may relate" (including the 1865 Act (Imp.) itself) are of an order of legislation that is superior to the South Australian 1975 Amendment; the C.L.V. Act 1865 (Imp.) has the status in South Australia of a superior constitutional instrument that is capable of nullifying every colonial law that is repugnant to the Imperial legislative provisions described in that section.

The South Australian Supreme Court was created by the combined effect of the 1834 Act (Imp.), the O.I.C. (1836), the 1937 Ordinance (S.A.), and the 1842 Act (Imp.) all of which, properly construed, constitute, and are comprehended by the passage "the provisions of an Act of [the Imperial] Parliament" (s. 2 of the C.L.V. Act 1865 (Imp.)).

The Supreme Court was thereby established as a Court of Judicature (S.I.). A Court of Judicature is a particular kind of Court whose character sets it apart from Courts generally. Viewed historically, Courts have ranged from public meetings of a designated section of the community - designated, in accordance with tradition, convention, or superior command, by reference to territorial division, occupation, or heridity - which were convened formally to transact public business - legislative, administrative, and judicial, to permanent Courts of record, staffed by professional judges, administering a settled or predictable set of legal rules and principles, whose function has been to administer justice according to law between man and man, or between State and citizen, by trying and determining causes, actions, or matters, properly brought before them, and declaring and enforcing the primary or sanctioning rights and duties of the litigants.

Courts of Judicature have certain distinguishing features which include, but are not exhaustively limited to, the following: they are presided over by professional judges; those judges hold themselves and the litigants who come before them bound by rule and principle of law; the judicial process, at its heart, embraces the interpretation, declaration, and application of existing law to determined facts, and excludes the making of new law (except interstitially), and all work of a purely executive or legislative character (except to the extent that, historically or logically, such work can fairly be classified as incidental, ancillary, or subordinate, to what is essentially, predominantly, or pre-eminantly, judicial). In this connection, a principle or rule of law is taken to be a principle or rule of conduct that is so established, by general acceptance or power of sanction or both, as to justify a prediction with reasonable certainty that it will be recognized, declared, and applied, by Courts if its authority or operation is questioned or challenged (compare "The Growth of the Law" by Cardozo J. 1 Edn page 52). When it is said that a particular Court is a Court of Judicature, which administers justice according to law, a clear distinction is being impliedly drawn between what is, and what is not, an integral part of the judicial process invoked and applied by its judges. It is entirely alien to that process that a judge should be obliged to decide a case, not according to what is fair and regular under the law, as authoritatively recognized and declared, but according to what is considered, in the circumstances of the case to be expedient, politic, opportune, shrewd, or pragmatically desirable (which may here be referred to as "non-judicial criteria"), notwithstanding that the decision thus reached is unjust or is not according to law (in the sense in which that expression is propounded above).

The proposition thus formulated does not overlook the subsidiary part played by considerations of what is expedient,necessary, or practicable, in decisions made by Courts of Judicature that are incontestably decisions

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according to law, arrived at after duly carrying the judicial process into execution. For example, our own Supreme Court rules (which, incidentally represent the exercise by a Court of Judicature, of its ancillary power to legislate to enable it more effectively to discharge its primary functions) speak in places - 0.50 r.4, 0.55 r.6, and 0.58 r.29 - of what is "expedient" - that word may be associated with another word such as "necessary" or "just". But the distinction is both wide and clear between, on the one hand, a tribunal whose whole approach, method, and processes, are governed by non-judicial criteria, and one which acts as a Court of Judicature proper, although it acknowledges that, in rerum natura, it may find itself, when attempting to give effect to judicial criteria, limited, in part, by what is practicable. (Compare the equitable principle that Courts of Chancery declined to order specific performance of a Contract of Service). It is perhaps significant that a conventional and time-honoured - and therefore presumably appropriate - formula for conferring a regulation-making power on His Excellency the Governor in Council is to provide that he may make such regulations as are "necessary or expedient"with respect to the prescribed heads of subject matter.

The same proposition, moreover, not unreasonably accommodates the Court's important functions, to which legal history testifies eloquently, in the realm of legal administration, in the formal creation of titles, and in giving declaratory judgments. This Court, like other Courts of Judicature, has or has had extensive jurisdictions in administering trust and deceased estates, the winding up of companies, and the realization and distribution of bankrupt estates. Traditionally, too, Courts of Judicature have created, transferred and extinguished rights by judicial decree or order: for example, vesting or charging orders; decrees of foreclosure; decrees of divorce or judicial separation; sequestration orders; orders of discharge in bankruptcy; orders appointing or removing trustees and many of the other orders made under Part III

of the Trustee Act 1936-1974; granting probate in common form or letters of administration; and administering the lodging of caveats. (It is not suggested that the list is exhaustive). Courts, moreover, frequently declare rights - for example, pursuant to Orders 54A and 55 of the Supreme Court Rules - before any question of enforcement or any dispute as to a specific right arises.

The function of the courts in all such matters, viewed in isolation, may appear to be primarily administrative, to have no sufficient connection with a lis, to be such as ought to concern administrators and not Courts of justice. But those matters, if one is attempting to characterize the Courts' functions in their true perspective - against the entire range of its jurisdictions, powers, and procedures - cannot be thus viewed. In all such cases, a scrutiny of the proceeding or matter under consideration reveals that it is, speaking generally, prefatory to, incidental to, or consequent upon, some action, proceeding, cause, or matter, of which a Court of Judicature may or would rightly take cognizance. For example, although the administration of the bankruptcy laws constitutes essentially a salvage operation, nevertheless that operation is directed, in the main, to composing and resolving claims against the estate in the peculiar circumstances of hardship and loss to all concerned. Again, grants of probate in common form set at rest doubts and misgivings that might otherwise assail those who have an actual or contingent interest in the dispositions preceded by the magical words "This is the last Will and testament.....". Or again, decrees dealing with the appointment, or the powers, of trustees, or other matters arising on the administration of an estate or settlement, are always made against a background of possible challenge by cestuis que trust and persons interested.

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The Supreme Court, thus established and impressed with the character of a Court of Judicature, was continued through the nineteenth century to the year 1865, enshrined by the C.L.V. Act 1865 (Imp.), and now stands, ready to be invested with functions, jurisdictions, and powers, that are proper, but not - because the C.L.V. Act 1865 (Imp.) forbids it -those that are not proper, for a Court of Judicature to discharge and exercise.

What is required of this Court by the 1975 Amendment is principally to be spelt out of the new Part V introduced by that Amendment, more especially by the new s. 86. On the face of Part V, the Supreme Court is obliged to engage in processes, and to discharge functions, that are beyond the competence of a Court of Judicature to engage in or discharge. The appeal provisions are, therefore, repugnant to the provisions of an Imperial Act of Parliament and are consequently null and void.

The whole 1975 Amendment, however, is founded upon the appeal provisions which are not truly severable, and hence the entire Amendment falls. It must follow that the declarations sought should be made.

So runs the argument advanced by Mr. Williams. In thus stating it baldly, I have not paused to explore again the entrancing bye-ways through which Mr. Williams, here and there, led us while the main body of his reasoning marked time on the highroad.

It remains to be seen whether the argument can be made good.

Construction of the relevant instruments.

The province of South Australia was a settled colony,and in and with respect to it the King's Prerogative entitled him to exercise important constitutional powers for establishing the arms of Government: he could appoint a Governor as his immediate representative, and persons to form a Council upon whose advice the Governor would act; he could set up Courts of justice;

and he could establish a local representative legislature with a nominated upper House and an elected lower House based on the Westminster model. These powers were useful, but were either inconveniently circumscribed, or subject to some doubts as to their amplitude. There was no doubt that the King, by the exercise of His Prerogative, could grant cognizance of pleas to proceed secundum legem terrae, but not to proceed by other laws. In the nineteenth century, some doubts were raised whether the King could grant the right to a Court of Equity. Forsyth's "Cases and Opinions on Constitutional Law" No. 24 (p.172) gives an instance of a joint opinion of the Attorney and Solicitor General of the day (1827) with respect to the proposal to appoint a Master of the Rolls in the province of Upper Canada. The learned Law Officers tendered the advice that the office of Master of the Rolls was so peculiarly linked by tradition and history with England and the law in England that there was grave doubt whether such a judicial officer could be appointed in a colony, but they nevertheless suggested that "The intended Equity judge should be called Vice-Chancellor to the Governor, and make his deputy for the desired purpose to which it is supposed the Governor's authority may be usefully employed in a Court of Equity". The learned Law Officers, however, still apparently retained some misgivings, and added, "But in order to prevent doubts on the subject we would recommend this to be done by the aid of Parliament or of the local legislature."

Furthermore, once a representative legislature was established, the Crown's power to legislate by the Prerogative was suspended while that legislature existed, unless a power so to legislate by the Prerogative was carefully and expressly reserved: Sammut v. Strickland [1938] A.C. 678.

It is not surprising, therefore, to read that when His Majesty was empowered by the 1834 Act (Imp.) to erect South Australia into a Province, the relevant provision (s. II) and the order in Council that followed it (O.I.C. (1836)) conferred powers that were

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wider in purview than the Prerogative simpliciter.

That section reads:

"II. And be it further enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, by any Order or Orders to be by Him or Them made with the Advice of His or Their Privy Council, to make, ordain, and, subject to such Conditions and Restrictions as to Him and Them shall seem meet, to authorize and empower any One or more Persons resident and being within any One of the said Provinces to make, ordain, and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts and appoint such Officers, and also such Chaplains and Clergymen of, the Established Church of England or Scotland, and to impose and levy such Rates, Duties,and Taxes, as may be necessary for the Peace, Order, and good Government of His Majesty's Subjects and others within the said Province or Provinces; provided that all such Orders, and all Laws and Ordinances so to be made as aforesaid, shall be laid before the King in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the Provisions of this Act."

The O.I.C. (1836), after reciting the relevant parts of the 1834 Act (Imp.) and certain Letters Patent of 1836 (which fixed the territorial limits of the new Province), contintued thus:

".... His Majesty does therefore, with the advice of His Privy Council and in pursuance and exercise of the authority in him vested by the said Act, order, and it is hereby ordered that the Governor for the time being of His Majesty's said Province of South Australia, or the officer administering the Government thereof, the Judge or Chief Justice, Colonial Secretary, the

Advocate General, and the resident Commissioner thereof for the time being so long as they shall be respectively resident in the said Province, or any three of them, of whom the acting Governor is to be one, shall have authority and power to make, ordain and establish all such Laws, Institutions, or Ordinances and to constitute such Courts and appoint such officers, and also such Chaplains or Clergymen of the Established Church of England and also such Chaplains or Clergymen of the Established Church of Scotland and to impose and levy such Rates, duties and Taxes as may be necessary or expedient for the peace, order and good Government of His Majesty's subjects and others within the said Province, which power and authority shall nevertheless be exercised subject to the following conditions and restrictions that is to say that all such Laws, Institutions and Ordinances as aforesaid shall by the said Governor or Officer administering the Government with all convenient expedition be transmitted to His Majesty for his approbation or disallowance through one of His Principal Secretaries of State and that the same or such part thereof if any as shall be disallowed shall not be in force within the said Province, after His Majesty's disallowance thereof, shall be make known in the said Province and that the same shall not in any wise be contrary or repugnant to any of the provisions of the said recited Act And further that no such Law institution or ordinance shall be made unless the same shall have first been proposed by the said Governor or Officer administering the Government, and further that in making all such Laws Institutions and Ordinances the said several persons shall and do conform to all such Instructions as His Majesty shall from time to time be pleased to issue for that purpose. And the Right Honorable Lord Glenelg one of His Majesty's Principal Secretaries of State is to give the necessary directions herein accordingly."

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The first question that arises is whether the passage conferring "authority and power to constitute ... Courts" is to be construed as having been inserted, ex abundanti cautela, to render explicit what was necessarily implicit in the passage, conferring a general legislative power, that immediately preceded it; or whether it represents a separate head of power, capable of being exercised in an appropriate way, for setting up Courts. It must initially be remarked that neither the 1834 Act (Imp.) nor its complementing O.I.C. (1836) contains an overt and precise reference to the several functions that the nominated persons must of necessity discharge; and yet, putting the subject matter of Courts aside, it is plain that those persons, in contemplation of both those Instruments, are to, or at least may, do things other than by or through the legislative process: they are to appoint officers (presumably to be Court staff), chaplains or clergymen of the Established Church of England, and Chaplains or Clergymen of the Established Church of Scotland. There must, moreover, be borne in mind, what has been alluded to above, that a head of Prerogative power, by the exercise of which Courts competent to administer at least the common law could be established in newly occupied colonies, was unquestioned.

Furthermore, it may be affirmed with confidence that, although early attempts were made by English Monarchs to impose taxes and duties by the exercise of their Prerogative, it had, by 1836, been constitutionally settled for some centuries that the only valid, effective and acceptable, method of taxing was by and through Parliament (compare, for example, the list of Acts relating to customs recited in 6 Georgii IV c.105); Monarchs had for centuries eschewed the imposition of duties and taxes by the stark exercise of Prerogative power. It would be passing extraordinary, therefore, to find that the reason why it was deemed necessary to spell out the power to impose rates, duties, and taxes, was because there might otherwise be some doubts as to the legislative power with respect thereto;

a far more natural explanation is that the draftsmen of the Imperial Act and Order in Council found it essential, if the relevant power was to be exercised other than by legislation, to make it abundantly clear that so strongly entrenched a Parliamentary tradition was to be departed from. It may well have been seen as constitutionally useful for Imperial Acts of Parliament to confer, at least temporarily, upon colonial Governors, the power to impose rates, duties, and taxes if they were to be lawfully imposed and levied promptly on the setting up of the colony. The authority to make laws was apparently intended, in my judgment, to be treated and interpreted as separate and distinct from the other three authorities, both in character and effect.

Upon a consideration of the form and history of s.II of the 1834 Act (Imp.) and of the O.I.C. (1836), it seems to me that the Imperial Parliament authorised His Majesty William IV to appoint certain persons with powers particularly appropriate for the immediate establishment in South Australia of the arms of Government and the immediate control of the raising of money by taxation - in particular, with power, to be exercised in appropriate ways, to advise the administrator of the government, to set up Courts; to make certain appointments for the Established Churches; to impose and levy, rates, duties, and taxes; and to make laws. All these powers were to be exercised for the peace, welfare, and good government, of the colony; but the acts-in-law by which the four heads of power were exercised, respectively, differed, inter se, in important respects. Where a provincial law, institution, or ordinance, was made or ordained, its provisions, given an identifiable nexus with the peace, order, and good government of the province, were self-sufficient; it was unnecessary to refer to Imperial legislation except to identify the source and ambit of the

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power in virtue of which they had been made. The laws, institutions, or ordinances were creative acts of a self-sufficient law-making body. But an exercise of any of the other three heads of power did not amount, in the orthodox sense, to an act of law-making: rather did it settle and define, in each case, the scope and operation of an Imperial law that extended to the Province; in other words, it refined and perfected an Imperial law, as distinct from making a new provincial law. To my mind, it is sufficiently evident that the 1834 Act (Imp.) contemplated, without reservation or qualification, that, at all events in the early stages of colonization, the three powers to "do things" could (and probably would) be exercised simply by some appropriate means, and not necessarily by the making of South Australian laws.

The O.I.C. (1836) represents the next stage by which (inter alia) the Supreme Court was brought to South Australia. His Majesty King William IV therein and thereby established the Province, together with its essential arms of government, pursuant to the power conferred on him by the Imperial Act. That was not an act of colonial law-making; it was an act of the highest executive authority by which what was contemplated and authorised by the 1834 Act (Imp.) was brought into force according to its tenor.

One is thus led to a consideration of the controversial Instrument that has, throughout the debate before us, been referred to as an Ordinance - the 1837 Ordinance (S.A.).

I begin, by premising with respect to it, that there is no legal principle of which I am aware that denies - more particularly in the initial stages of colonising a British Possession - to an Instrument of Government (to use an intentionally neutral expression) more than one operation, provided that there pertains to or inheres in the Instrument, and in the manner of its making and publishing, such essential and formal validity as is necessary for the several operations in law that it is alleged to have.

I can see no reason why, given favourable conditions, such an Instrument should not comprise a proclamation, an appointment, and an act of colonial law-making proper.

Such, in my opinion, was the character and effect of the 1837 Ordinance (S.A.). The first three paragraphs (which for convenience I shall term "sections") of this Instrument run:

"AN ACT for the Establishment of a Court to be called the Supreme Court of the Province of South Australia.

BE IT ENACTED by His Excellency JOHN HINDMARSH Knight of the Royal Hanoverian Guelphic Order Captain in the Royal Navy Governor and Commander-in-Chief of His Majesty's Province of South Australia and its Dependencies by and with the advice and consent of the Legislative Council thereof that there shall be and His Excellency the Governor by and with the like advice doth erect create constitute and establish a Court of Judicature to be called the Supreme Court of the Province of South Australia.

II. That such Court shall be holden before a Judge of the said Court to be called the Judge of the Supreme Court of the Province of South Australia (Sir John William Jeffcott Knight being appointed by His Majesty the Judge of the said Province for the purpose of holding and presiding in the said Court) and that from time to time hereafter upon death vacancy or resignation the Judge of the said Supreme Court shall be appointed by His Majesty His Heirs and Successors save hereinafter mentioned and that such Court shall also have all such ministerial and other officers as shall be necessary for the administration of Justice in the said Court and for the due execution of the judgments decrees orders and processes thereof.

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> III. That the numbers names and duties of such ministerial and other officers shall from time to time be fixed and defined by the Judge of the Supreme Court with the consent of His Excellency the Governor of the Province of the time being by and with the advice of the Council thereof and that the appointment and removal of such officers in case of misconduct shall be vested in the Judge for the time being of the Supreme Court."

Certain features of those sections immediately appear remarkable. What was done was described as being "by and with the advice and consent of the Legislative Council". There was then no Legislative Council stricto sensu. There were only persons appointed, pursuant to the 1834 Act (Imp.), by the O.I.C. (1836), to perform certain functions. The Legislative House correctly called the Legislative Council was not created till 1842 (s. V of the 1842 Act (Imp.)). The Legislative Council referred to in the 1837 Ordinance could only be the appointed persons referred to in the Imperial Act and order in Council, and the expression "Legislative Council" could only be one of convenience adopted for the occasion as a label. Further, the opening passage "Be it enacted" had by 1837 acquired in Imperial legislation the standing of an expression of art that, generally speaking, was exclusively referable to the Acts of a properly constituted Parliament with an upper and lower House. The time and circumstances, therefore, were such that those formal words, by which the act-in-law or acts-in-law was or were done or executed by the Ordinance, were not wholly apt, but they are illustrative of the difficulties faced by Sir John Hindmarsh and his appointed colleagues by whom manifold functions of government were to be discharged.

But the matter does not rest there.

The second half of s. I reveals a significant dichotomy which appears clearly when the section is reduced to its skeletal form:

"(A) Be it Enacted by His Excellency..... by and with the advice and consent of the Legislative Council thereof that there shall be,

(B) and His Excellency..... by and with the like advice doth erect create constitute and establish

a Court of Judicature to be callled the Supreme Court of the province of South Australia.

The sixteen other sections in this Instrument all begin with the word "That" which grammatically and, in my view, in contemplation of law, refer back directly to the portion marked (A) above - that is, the enacting portion.

Too much importance, from a constitutional point of view, cannot be ascribed to the dichotomy thus displayed. It seems to me abundantly clear that, by the first section, His Excellency and his appointed colleagues were performing and executing two quite distinct functions and acts-in-law: by the portion marked (B) above they were exercising the power "to constitute ..... Courts" with which, by the 1834 Act (Imp.) and the O.I.C. (1836), they were invested (which was the act of a duly constituted Executive arm of government); and by the portion marked (A) above they were exercising the power "to make, ordain and establish ..... Laws, Institutions or Ordinances" (which was the act of a duly constituted law-giving authority).

By the portion marked (B) they were, by Executive act, defining and delimiting the operation of those provisions of the 1834 Act (Imp.) that were implemented by the O.I.C.(1836); by the portion marked (A) they were legislating in the role of a colonial law-making authority on identically the same topic and, purportedly, to identically the same effect. If the portion marked (B) defines, delimits, and perfects, the operation of an Act of the Imperial Parliament, I see no reason why it should be held to have lost that virtue and effect because the thing that was thus done by and pursuant to an authority

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created by that Act is also done, by virtue of another authority created by the same Act, by a valid colonial law (that is, the portion marked (A)).

I should add that, in my opinion the form of s. I of the 1837 Ordinance (S.A.) is the clearest contemporanea expositio that can be imagined of the disjunctive interpretation accorded above to s. I of the 1834 Act (Imp.).

But it may be said - let it, indeed, be assumed, contrary to the opinion just expressed - that the distinction alluded to above is too finely drawn; that, in truth, the whole Instrument - the entire 1837 Ordinance (S.A.) - purported to be, and was, no more than an act of colonial legislation (though it may be owned to be strangely expressed). If that is so (the argument proceeds), then the 1837 Ordinance (S.A.) must be subsumed under the heading of a colonial law for the peace, order, and good government, of the Province and, within the limits of that very broad head of power, it can be repealed or amended just like any other piece of provincial legislation, without being affected or protected by the C.L.V. Act 1865 (Imp.).

That may be some of the truth of the matter, but, in my opinion, in the particular circumstances, it cannot be the whole truth. Accepting, as, in my view, one must, the postulate that the 1834 Act (Imp.) and the O.I.C. (1836) contemplated that certain things authorised to be done would be done by appropriate means, I can find in written and unwritten law no evidence of rule or principle that would have denied the Governor the power to have deemed an Act of the provincial legislature an appropriate means: such an Act bore upon its forehead the unanimous endorsement and approbation of the persons vested with Imperial authority; it was as formal, solemn, and public, as any other mode by which that authority could have been exercised; and it carried the advantage, quantum valuisset, of being a colonial law in its own right. But to say all that does not, in my opinion, disengage it from its complementary

effect upon the 1834 Act (Imp.) and the O.I.C. (1836). In sum, it had a dual operation - as a colonial law, and as a formal act-in-law that complemented those two Imperial Instruments.

There next falls for consideration the 1838 Act (Imp.). This is of only historical interest and does not, in my judgment, affect the main stream of constitutional inquiry. The practical reason for the Act is to be found in the heart of the recitals where, after rehearsing the formal legislative and administrative acts that had been passed and done the text continued: "And whereas Doubts have arisen as to the Extent of the Powers vested in the said Colonization Commissioners for South Australia by the said Act, and it is expedient that such Powers should be more clearly defined, and that the Provisions of the said Act should be amended in manner herein-after mentioned: and whereas it is in and by the said Act [that is, the 1834 Act (Imp.)] provided, that it should be lawful for His Majesty, His Heirs and Successors, with the Advice of His or Their Privy Council, to authorize and empower such Persons as therein mentioned to make, ordain, and establish Laws, Institutions, and Ordinances, and to constitute Courts, and to appoint Officers, Chaplains, and Clergymen, and to levy Rates, Duties, and Taxes as therein mentioned:" Section 1 of the Act reads:

> "Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the aforesaid Powers and Authorities shall be and the same are hereby repealed; and in lieu thereof it shall and may be lawful for Her Majesty, Her Heirs and Successors, by any Order or Orders to be by Her of Them made, with the Advice of Her or Their Privy Council, to make, ordain, and by Warrants under Her or Their Sign Manual (subject to such Conditions and Restrictions as to Her or Them shall seem meet) to authorize

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and empower any Three or more Persons resident and being within the said Province to make, ordain, and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts, and to impose and levy such Rates, Duties and Taxes as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others within the said Province; provided that all such Orders, and all Laws and Ordinances so to be made as aforesaid, shall be laid before the Queen in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the Provisions of the said recited Act or of this Act."

There was, of course, no Imperial Act then in force containing a general saving provision similar to s. 16 of the Acts Interpretation Act (S.A.) so that the effect of any repeal or revocation was to be gathered from the legislative intendment, express or implied. I do not propose to dwell on this part of the case because, in my opinion, the purpose and effect of the 1838 Act (Imp.) was, and is, abundantly clear; there was no intention to nullify ab initio whatever had been done under the previous legislation; the intention was simply to terminate the "Powers and Authorities" (which were deemed to be always available to the extent that they had not been exercised once and for all) and to restate and renew them with greater certainty. To my mind, it is impossible to read into the Act an intent to sweep away what had been established, and to start again; the paramount aim of the Act - which, in my judgment, was achieved - was to make available the same authorities as before, better formulated and, perhaps, freed from any doubts attaching to their exercise by a Queen who did not originally receive them. A Court should not, in those circumstances, read into the legislation an operation that would undo what had already been done by virtue of the previous powers, unless the clearest language constrains it to do so. Effects of such magnitude are not left to be produced by a side-wind.

I turn now to a second Imperial Act that stands close to that of 1834 in importance - the 1842 Act (Imp.). That Act was plainly intended, judging by its scope and the generality of its language, to be a comprehensive constitutional charter for South Australia for many years to come. The Act begins by reciting the 1834 and 1838 Acts (Imp.) and then continued:

> "And whereas it is expedient that the said Acts should be repealed, and that Provisions should be made for the better Government of the said Colony; be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Acts shall be repealed.
>
> II. Provided always, and be it enacted, That all Laws and Ordinances heretofore passed under the Authority and in pursuance of the said recited Acts or either of them, and that all Things heretofore lawfully done in virtue of the said Acts or of either of them, shall hereafter be of the same Validity as if the said Acts had not been repealed (save only so far as respects any such Laws, Ordinances, or Things relating to the future Appropriation of the Revenue of the said Colony, or such casual or territorial Revenue as may accrue to Her Majesty within the same or the future Liability of such Revenues to any Charges to which the same may have been made subject).

I pause there. The form of the drafting looks strange to modern eyes. One almost receives the impression that the draftsman was struggling with novel and intractable material. The periphrasis adopted by Parliament is not unlike that of the perambulations of the character portrayed in Chesterton's poem "The Rolling English Road", who spoke of "That night we went to Birmingham by way of Beachy Head". Be that as it may, I have no doubt of

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what was attempted and what was done: the Laws and Ordinances and all things lawfully done in virtue of either of, or both, the Imperial Acts retain their validity in this way: the Laws, Ordinances, and Things done, remain valid and effective, and to the extent that they derived, and derive, their legal force from the Imperial Acts they retain that force in the same way as if the Imperial Acts stood unrepealed. It must hereafter be borne in mind that this saving operation is given by an Imperial Act, not by a Colonial Law. The whole legal and constitutional operation of what had been done and provided for was, in my judgment, preserved in its pristine character. What was terminated, for all practical purposes, was the source of power and authority contained in the 1834 and 1838 Acts (Imp.) as warrant for future Laws, Ordinances, and Things Done for or in the Province: the 1842 Act (Imp.) replaced them with another and more comprehensive source. It may be observed in passing that the preservation of Laws, Ordinances, and Things done, so elaborately attended to, would have been a strange brutum fulmen if much of what was purportedly preserved had already been effectively destroyed by the 1838 Act (Imp.). I am thus confirmed by the 1842 Act (Imp.) in the construction adopted above for the earlier of those two Imperial Acts.

Section V of the 1842 Act (Imp.) repeated the fundamental law-making power for the province, set up a Legislative Council proper, and provided machinery for the creation of a representative General Assembly which would function, according to the Westminster model, with the Governor and the Legislative Council as an Upper House, as a Colonial Parliament. I pass over the remaining sections which, though of undoubted importance for the administration of the new Province, are irrelevant to this inquiry.

The year 1850 saw the passing of an Imperial Act which represented a determined effort on the part of the Parliament of Westminster to provide more or less uniformly for the governing of Her Majesty's Australian colonies. Though it was also of great historical and constitutional

importance generally, it is not, so far as I can judge, germane to the issue now before us. By S. XIV it sets forth the legislative charter for Victoria, Van Dieman's Land, South and Western Australia - "authority to make laws for the peace, welfare and good government of the said colonies respectively" but nothing in that or any other section appears to affect or vary the character or functions of the Supreme Court of S.A. One may add that s. XIV contains the fons et origo of the views so strongly held by Boothby J. about repugnancy of colonial legislation to English law: the proviso to the charter begins "Provided always, that no such law shall be repugnant to the law of England,....", and s. III of the C.L.V. Act 1865 (Imp.) was obviously enacted to resolve the doubts and misgivings generated by that unhappy passage.

A further constitutional development was marked by the 1856 Act (No. 2) (S.A.). This gave South Australia its first indigenous Constitution, whose provisions extended to matters legislative, executive and judicial. Sections 30 and 31 provide for Supreme Court Judges to hold office during good behaviour notwithstanding the demise of the Sovereign and for those Judges to be removed only upon the address of both Houses of Parliament. The continuance of the Supreme Court is assumed.

In the same year, the 1856 Act (No. 31) (S.A.) provided comprehensively for the administration of justice in and through the Supreme Court. Again, it is unnecessary to analyse its contents because, in my view, there is nothing in them that alters, or purports to alter, the basic character of the Supreme Court. The formula is adopted (s. I "that the said Supreme Court, so established as aforesaid, [that is, as described in the recitals] shall continue.....".) It may in some measure confirm the dual character of the Instrument that the first recital exhibits a hesitancy in characterizing the 1837

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Ordinance (S.A.): "Whereas by an Act or Ordinance, No. 5 of the seventh year of His late Majesty King William the Fourth, a Court of Judicature was established .....". I shall recur to this recital later.

I come now to the Imperial legislation that was cardinal to Mr. William's argument - the C.L.V. Act 1865 (Imp.). The Act was "to remove Doubts as to the Validity of Colonial Laws". It will be convenient to set forth the material parts of the Act forthwith:

"WHEREAS doubts have been entertained respecting the authority of divers laws enacted or purporting to have been enacted by Legislatures of certain of Her Majesty's colonies and respecting the powers of such Legislatures, and it is expedient that such doubts should be removed:

Be it hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, of this present Parliament assembled, and by the authority of the same as follows:

1. The term 'colony' shall in this Act include all of Her Majesty's possessions abroad in which there shall exist a legislature,as hereinafter defined, except .....(Immaterial).

The terms 'legislature' and 'colonial legislature' shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

The term 'representative legislature' shall signify any colonial legislature which shall comprise a legislative body of which one-half are elected by inhabitants of the colony:

The term 'colonial law' shall include laws made for any colony either by such legislature as aforesaid or by

Her Majesty in Council:

An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

The term 'Governor' shall mean the officer lawfully administering the government of any colony:

The term 'letters patent' shall mean letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland.

2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

4. .....(Immaterial).

5. Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed

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at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

6. .....(Immaterial).

And whereas doubts are entertained respecting the validity of certain Acts enacted or reputed to be enacted by the Legislature of South Australia: Be it further enacted as follows:

7. All laws or reputed laws enacted or purporting to have been enacted by the said legislature, or by persons or bodies of persons for the time being acting as such legislature, which have received the assent of Her Majesty in Council, or which have received the assent of the Governor of the said colony in the name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the date of such assent for all purposes whatever: Provided that nothing herein contained shall be deemed to give effect to any law or reputed law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful disallowance or repeal of any law."

From all the Instruments discussed above, and from this Imperial Act, there arise these questions: Has the Supreme Court been established as a Court of Judicature? If it has been so established, does that Court, while it remains unaffected by later legislation, have a legal character, attributable to the form in which it was established, that can be clearly defined, or is a Court of Judicature an amorphous creation not susceptible of precise definition? If a Court of Judicature is a juridical entity capable of being clearly defined, was it created in such circumstances, and by such Instruments, that any subsequent South Australian legislation that professes to

require it to perform a function wholly at variance with its ordained character is "repugnant" either to "the provisions of an Act of Parliament extending to [South Australia]", or to "any order or regulation made under authority of such Act of Parliament, or having in [South Australia] the force and effect of such Act", and is accordingly, "to the extent of such repugnancy ..... absolutely void and inoperative."?

Before attempting to answer those questions, it will be helpful to examine the extent to which (if at all) s. 5 of the C.L.V. Act 1865 (Imp.) bears upon them.

There can be no doubt that that section preserves, subject to subsequent Imperial legislation to the contrary, the power of the State legislature to establish new Courts of Judicature, to abolish and reconstitute them, to alter their constitution, and to make provision for the administration of justice in such Courts. It could not, I apprehend, be disputed that, pursuant to, and consistently with s. 5, new jurisdictions could be given to this Court, or to any other Court of Judicature; the constitution- that word cannot, in my opinion, be limited to connote simply those Judges sitting, but extends to the Court's jurisdictions, powers, exemptions, functions, duties, and responsibilities - would be thereby altered. But the language of the section, by necessary implication, denies to the State legislature the power to change the character of any such Court from one that appertains to a Court of Judicature to one that does not - assuming, for the purposes of that assertion, that a Court of Judicature has a definitive character.

I return to the question propounded above which I shall examine seriatim.

Has the Supreme Court been established as a Court of Judicature?

That question is not petitio principii; it asks, in effect, what the legislative and administrative authorities purported to do by the relevant Instruments.

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There can, in my opinion, be no dispute about not only what was expressed to be done by those Instruments but what the South Australian legislature recognized had been done.

The 1834 Act (Imp.) and the O.I.C. (1836) spoke of an authority to constitute "Courts" simpliciter, but the 1837 Ordinance (S.A.) established a "Court of Judicature." Moreover, the first recital to the 1856 Act (No. 31) (S.A.), which is set forth above, spoke not just of the establishment of the Supreme Court, but of the establishment, by the 1837 Ordinance (S.A.), of a Court of Judicature, which was called the Supreme Court of the Province of S.A. The recital regarded the character of the Court as worthy of separate mention; and apparently treated that character as important because it was recited first, as a genus, before this Court was referred next as a species of the genus. A similar emphasis is to be found in s. I of the Act where the draftsman did not just "continue" "the Court called the Supreme Court" or "the said Supreme Court", but again emphasised its character by providing "that the said Supreme Court, so established as aforesaid, shall continue....."; if the consequences of its establishment as a Court of Judicature had not been regarded as warranting special mention, the passage"... so established as aforesaid ....." would be a piece of tautology, because the passage "the said Supreme Court" would have been seen as ample to identify the tribunal whose existence was to be continued. It is perhaps not without significance that s. 6 of the Supreme Court Act 1935-1975 enacts not the simple provision that "The Supreme Court of South Australia is hereby continued ...." but rather that "The Supreme Court of South Australia as by law established is hereby continued as the superior Court of record, in which has been vested all such jurisdiction (whether original or appellate) as is at the passing of this Act vested in, or capable of being exercised by, that Court." The special reference to the Court's establishment contrasts with the definition of "Court" (s. 5) as "the Supreme Court of South Australia". The Court as a judicial entity which had, when the 1935 Act was passed, been in operation for nigh on one hundred years, was a legal phenomenon whose

establishment did not then really need emphasis unless that establishment was of special significance for the other principal subject matter of s. 6 - namely, its jurisdiction.

The relevant Instruments seem to me, therefore, to reveal the conscious purpose of setting up not just a Court, but a Court of a special kind, namely, a Court of Judicature. That answer leads naturally to the next question.

10 If the Supreme Court has, ex facie, been established as a Court of Judicature, does that Court, while it remains unaffected by later legislation, have a legal character, attributable to the form in which it was established, that can be clearly defined? If so, what is that character?

Before examining this question, it is necessary to acknowledge certain legal and constitutional propositions, because,as the 20 former Chief Justice (Napier C.J.) once wrote "... my experience in the Courts has convinced me that it is beyond the wit of man to lay down or explain the law in terms that are incapable of being misunderstood or misapplied".

I acknowledge that it is not possible in law, where an autonomous State legislature has the amplitude of power, conferred on it by Imperial Act, connoted by the expression "peace, 30 welfare (order), and good government", for a State Act to give to a Court, once and for all, a character, such as has been described above, in such terms that that character cannot be varied, in whole, or in part, by a later State Act. I acknowledge that within the limits imposed by the requirement of nexus and territoriality, the South Australian Parliament has plenary power to pass laws under that broad head of subject matter equal to that of the 40 Parliament of England. I should not be even pursuing the present inquiry, if it were not at least arguable that the entrenched character of this Court was and is derived from, and is dependent on, an Imperial Act, which is intended to extend to and apply to this State, and which the State Parliament cannot, by its own legislation, impugn.

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The word "judicature", according to its ordinary acceptation and usage, connotes the carrying out of the judicial process by duly constituted Courts engaged in the administration of justice. So much, I apprehend, is certain; but there is much more to be said. The word imports not work in Courts of some or every kind, but a special sort of work - the act of judging - in a tribunal established specifically to enable that work to be done. In a civilized community, a judge is usually taken to be an officer of high authority and independence, appointed to administer the law, and for that purpose to hear and determine causes or matters, duly brought before him, in which there is a dispute, or there are opposing contentions, by one person or persons against another person or persons, or by one person or persons against the State or an instrumentality of the State. He may also be called on to act when such a dispute or such opposing contentions are either inchoate or imminent, or have been resolved, and he is required to make a determination with respect to some act or matter that is incidental to, or consequential upon, such a dispute or opposition. The judicial process will oblige a judge, in the exercise of his prime function, to examine accounts of facts, and legal rules and principles, and apply existing law to the facts admitted or established to his satisfaction. The circumstances in which a judge is called on to apply the judicial process vary considerably in degree and emphasis. But lying at the heart of the judicial function, to my understanding, is the duty to apply legal rules and principles that are either known and indisputable, or that are predictable with reasonable confidence because they are capable of being derived from superior principles of wider generality; that duty he must discharge impartially, according to formulated rules that he regards as binding on him and all to whom they apply. Positively, a judge is thus bound. Negatively, he must regard himself as imperatively and unconditionally precluded from bowing to the dictates of the expediency and the pragmatism of the legislator or the administrator. He is above all an interpreter of the law, and not a creator of legislative or administrative policy. No application of the essential judicial

process would ever permit a judge to state, with respect to the resolution of some proceeding or matter before him, that, without regard to, or in defiance of, received or predictable principles or rules of law, and whether or not it gave to those before them their due under the law, his decree or order would be thus and thus because it would, in the circumstances, be expedient, politic, or desirable in the interests of some direct or indirect aim of the Sovereign (using that word in the Austinian sense).

So stands, in my judgment, the natural and ordinary meaning of the expression "Court of Judicature", and its correlative, "the judicial process". But the comparative generality of that meaning receives, from the circumstances in which that expression was used in 1837, substantial confirmation and a definitive purview.

In the fourth decade of the nineteenth century the Judicature Acts had not been drafted - though the movement for reform in the administration of justice had begun, but the Courts that were finally brought, in the years 1873 to 1875, within the structure of a Supreme Court of Judicature, had been established for centuries, and, bearing in mind the evolution and growth of those Courts from the days of the Curia Regis onwards, I am persuaded that they must have presented themselves as the models to which the draftsmen of the 1837 Ordinance (S.A.),and the authorities who made it, would have had regard when providing that there would be established in the Province a Court of Judicature. I find it impossible to suppose that they could have intended or contemplated that the Court so established would be asked to be the servant of expediency or policy, a participator in the legislative processes of the Legislative Council, or its successors in title, or a maker and purveyor of purely administrative decisions.

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But to assert that they did not intend or contemplate such a thing does not conclude the principal inquiry; one must go on and search out the answer to the next question before one can ascertain, one way or the other, whether the Court so established is immune from change, so far as its inherent character is concerned, at the hands of subsequent State legislation.

Is the 1975 Amendment repugnant to the provisions of an Imperial Act of Parliament extending to South Australia (or to any order or regulation made under that Act) by or in virtue of which the Supreme Court was created a Court of Judicature and is that amendment, to the extent of that repugnancy, void?

Section II of the 1834 Act (Imp.), and to the complementary O.I.C. (1836), authorized, in my opinion, the persons named by the latter Instrument to establish, in the Province, Courts of such constitution and character as they might, in their judgment, select.

The 1837 Ordinance (S.A.) received the impress of Imperial authority in so far as the Ordinance established a Court, and in so far as it selected the essential character of that Court. That selection, in my judgment, exhibited both a positive and a negative facet: it conferred on the Court a particular character, and excluded from it all qualities and incidents that were obnoxious to that character.

According to the 1842 Act (Imp.) the operation and effect of the 1834 Act (Imp.), the O.I.C. (1836), and the 1837 Ordinance (S.A.) (being a "Thing ... lawfully done in virtue of" the 1834 Act (Imp.)), was to "be of the same Validity as if the [Imperial Acts mentioned, including the 1834 Act (Imp.)] had not been repealed;" the O.I.C. and the S.A. Ordinance are, therefore, in my opinion, to be evaluated, for the purpose of applying the C.L.V. Act 1865 (Imp.), as if the 1834 Act (Imp.)stood, and stands, to that extent, unrepealed.

How then, does the 1975 Amendment stand with the 1834 Act (Imp.), the O.I.C. 1836 and the 1837 Ordinance (S.A.)?

I shall assume for the purposes of answering that question that the 1975 Amendment professes to impose on this Court the unqualified duty of functioning as a Court of Judicature should not, and may not, function. Upon that assumption, it seems to me that the 1975 Amendment would pretend to repudiate the power of the 1834 Act (Imp.), or the O.I.C. (1836), or both, to authorize the persons nominated by the latter Instrument to select, both positively and negatively, the characteristics of the Court they establish. In brief, it is the Imperial claim to authorize that is being denied.

In my opinion, such a colonial law would be in conflict with, and hence repugnant to, the provisions of an Imperial Act of Parliament- or to an Order made under its authority, or both, and is, according to ss. II and III of the C.L.V. Act 1865 (Imp.), to the extent of its repugnancy, void and inoperative.

I now turn to the language of the 1975 Amendment. The question that arises from the conclusion just stated is twofold: to what extent, if at all, does the 1975 Amendment, ex facie, require the Supreme Court to perform functions that are repugnant to what I have concluded is its inviolable character as a Court of Judicature; and if there is such a repugnancy, to what extent can the 1975 Amendment be read by virtue either of s. 22a. of the Acts Interpretation Act 1915 (as amended) (S.A.), or of some other principle or canon of construction? Section 22a. of that Act reads:

> "22a. (1) Every Act and every provision of an Act shall be construed so as not to exceed the legislative power of the State.
>
> (2) Any Act or provision of an Act which, but for this section, would exceed the power of the State, shall nevertheless be a valid enactment to the extent to which it does not exceed that power.

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(3) This section applies in relation to Acts whether passed before or after the enactment of this section."

Speaking generally, a Court is constrained to apply s. 22a., in my opinion, only when the Act under construction has already been subjected to the ordinary processes of legal interpretation and is found to exceed power. If the Act is brought within power by an ordinary reading of it, s. 22a. has no subject matter upon which it can operate.

In this case, there are strong grounds, in any event, for reading this 1975 Amendment, in so far as it creates rights of appeal, restrictively and not liberally.

Electoral Redistribution is governed principally by Part V of the Constitution Act 1934-1975; that Part was introduced by s. 7 of the 1975 Amendment. The same Amendment also enacted new Sections 27, 32 and 37 (to the extent of sub-s. (1), for the principal Act. Those sections are closely connected with Part V. By s. 27 the House of Assembly is made to consist of forty-seven members elected by the inhabitants of the State legally qualified to vote.

Sections 32, 77, 82, 83, 85 and 86 are to such a degree interdependent that it would really be a false economy in exposition to attempt to summarize or paraphrase them. Section 86 is obviously cardinal to the determination of this action, but the remainder of the sections just listed are also important. I pause, therefore, to set forth the material provisions.

"76. (Unnecessary to reproduce)

77. (1) Whenever an electoral re-distribution is made, the redistribution shall be made upon the principle that the number of electors comprised in each electoral district must not (as at the relevant date) vary from the electoral quota by more than the permissible tolerance.

(2) In this section -

'electoral quota' means the nearest integral number obtained by dividing the total number of electors for the House of Assembly (as at the relevant date) by the number of electoral districts into which the State is to be divided as at the first polling day for which the order is to be effective:

'permissible tolerance' means a tolerance of ten per centum:

'the relevant date' means a date specified in an order as the relevant date, being a date falling not earlier than two months before the date of the order.

78. (Immaterial)

79. (Immaterial)

80. (Immaterial)

81. (Immaterial)

82. (1) The Commission shall, whenever required to do so under subsection (2) of this section, make an electoral redistribution.

(2) The Commission is required to commence proceedings for the purpose of making an electoral redistribution -

(a) within three months after commencement of the Constitution Act Amendment Act (No. 5), 1975;

(b) as soon as practicable after the enactment of an Act that alters presently or prospectively the number of members of the House of Assembly;

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(c) within three months after a polling day if five years or more has intervened between a previous polling day on which the last electoral redistribution made by the Commission was effective and that polling day.

(3) After commencing proceedings for the purpose of making an electoral redistribution, the Commission shall proceed with all due diligence to complete those proceedings.

(4) An electoral redistribution under this section shall be effected by order of the Commission.

(5) Except where discontinuous or separate boundaries are necessary for the purpose of including an island within an electoral district, the boundaries of an electoral district shall, in any electoral redistribution made by the Commission, form an unbroken line.

83. For the purpose of making an electoral redistribution, the Commission shall as far as practicable have regard to -

(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

(b) the population of each proposed electoral district;

(c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing electoral districts;

(d) the topography of areas within which new electoral boundaries will be drawn;

(e) the feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly;

and

(f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution,

and may have regard to any other matters that it thinks relevant.

84. (Immaterial)

85. (1) (Immaterial)

(2) (Immaterial)

(3) The Commission shall consider all representations made in accordance with this section, and may, at its discretion, hear and consider any evidence or argument submitted to it in support of those representations by or on behalf of any person.

86. (1) The Commission shall cause an order making an electoral redistribution to be published in the Gazette.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly

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made in accordance with this Act.

(3) The Commission shall be the respondent to any appeal under this section.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(5) Where more than one appeal is instituted against the same order, every such appeal may be dealt with in the same proceedings.

(6) In any appeal under this section, any person having an interest in the proceedings may, upon application to the Court, be joined as a party to the proceedings.

(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.

(8) The validity of an order of the Commission shall not be called in question except in an appeal under this section.

(9) An appeal against an order of the Commission shall be set down for hearing by the Full Court as soon as practicable after the expiration of one month from the date of the order, and the appeal shall be heard and determined by the Full Court as a matter of urgency."

The right of appeal purportedly given by sub-s. (2) of s. 86 is confined to the one ground: "that the order [of the Commission] has not been duly made in accordance with the Act".

The word "duly" is frequently relegated, in legislative contexts, to a position of comparative insignificance, but in this context it may be thought of as having an explosive operation. I shall give to it a fuller consideration later in the judgment; all that I need here say is that it is not necessarily confined to meaning "with conscientious regard to all necessary formalities".

The powers conferred on the Full Court by sub-s. (7) of s. 86, and the matters to which, by force of s. 83, the Commission must have regard "For the purpose of making an electoral redistribution ....." seem to me to justify the mounting of an argument that the Full Court is called on, by the literal words of the section, to examine the sufficiency of the material upon which the order was based; whether the Full Court could find itself obliged to hear evidence is possible but, prima facie, less likely.

If I were constrained, however, to give to s. 86 that kind of operation, I must own that I should search for all legitimate and proper means for reading down the literal meaning of the section to the point where the functions to be discharged by the Full Court would be consonant with its judicial constitution and tradition. It seems to me that legislation of the kind thus presented would otherwise constitute a legislative precedent that is dangerous and should be shunned. I acknowledge, without hesitation, that, from a strictly legal standpoint, there has not been imported into the Constitution of this State the doctrine of the separation of powers - legislative, judicial, and executive - that finds expression in our Commonwealth Constitution (the Boilermakers Case 94 C.L.R.254: 95 C.L.R. 529), and in the Constitution of the

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U.S.A. and the U.S. Supreme Court's decisions upon that separation. No such constitutional separation exists, strictly speaking in the United Kingdom. But there is in England, and in the States that follow her ways of government, something almost as strong and almost as compelling - a tradition, one may say virtually a convention, that there are some things that a Court should not be commanded to do. One may accept, although with reluctance, the postulate that, because the life, the business transactions, the economy, and the human and social relationships, of our community have grown so complex and involuted, it is not practicable - even if it is to be considered ideal - to keep strictly separate the functions of the Legislature and the Executive. But, in my judgment, the consequences of allowing the dividing line to become blurred between what is the judicial process and what is policy-making - whether that policy is made in the course of devising new laws, or of exercising the powers of Executive government - would be seriously inimical to the health of the body politic.

To make or administer the law is not the same thing as to administer justice under the law. If confidence is to be retained by the community in the form of government it has so far accepted, it is essential that there should be one arm of government, wholly separate and independent of the rest, which owns no master save that of the law, which is free of the pressures and burdens of the policy-making, and of the dictates of expediency; whose sole duty is to see right done to all manner of men under the law; and whose set and constant purpose is to give to every man his due (Justinian's Institutes I.I.1). A judge, by training, practice, and tradition, has inculcated in him the faculty and the predisposition to ascertain the facts fairly and to apply to them, consistently and impartially, the existing law, according to an interpretation that he must arrive at by invoking established and predictable principles and precepts. To determine a case or matter by any

other method is anathema. To substitute, for the tried and trusted judicial process, an unabashed appeal to expediency or policy in order to resolve each set of facts as they arise, would be odious, and fundamentally at variance with methods suitable for administering justice. He cannot tamper with a legal rule or provision in order to meet the exigencies of the hour.

Our Courts have traditionally and wisely paid homage to justice administered in accordance with known or reasonably ascertainable laws of general operation; they should not be forced to accept any other liege lord.

The principle in virtue of which I would, in consequence of the views just expressed, circumscribe words in s. 86 of apparently wide operation would, however, be difficult to apply. The results would be likely to be controversial and uncertain, though if I had derived no assistance from s. 22a. of the Acts Interpretation Act I should have been compelled to formulate and apply that principle. It seems to me to be safer and more definite, therefore, to apply s. 22a. to s.86 and its associated sections, by provisionally reading them widely rather than narrowly. After s. 22a. has, on the foundation of the entrenched character of the Supreme Court, been thus applied, it may be that no further reading down will be warranted. A similar process of reasoning would, in any event, be required of me by the High Court decision in Jumbunna Coal Mine N/L v. Victorian Coal Miners Association (1908) 6 C.L.R. 309 especially at pages 347 and 368.

The 1975 Amendment refers simply to an "appeal." In my experience, the word "appeal" has not yet achieved the status of a word of legal art. Any given appeal may be found, on examining its parent legislation, to occupy but one place in a gamut of review procedures. An appeal may range from a comprehensive rehearing of the whole case, through limited rehearings, appeals by way of case stated, appeals through, or in the nature of, review

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by prerogative process, appeals on points reserved, and appeals in error or other like reviews, to appeals by leave upon a specially formulated question of law. The function and powers of an appeal court can only be determined by construing the whole of the relevant legislation. In this case, a Court should have particular regard, in my opinion, to the permitted ground of appeal, the class of authorised appellants, the powers of the Appeal Court (the Full Court), and the terms of reference, powers, and duties, of the Commission.

Bearing in mind the view that I have formed as to the entrenched character of the Supreme Court as a Court of Judicature, the imprecise meaning, in se, of the word "appeal", and the manner in which s. 22a. of the Acts Interpretation Act operates, a workmanlike method of testing the validity of the appeal provisions will be to determine the extent to which what is apparently required of the Full Court passes beyond its correct functions, and whether those provisions can be given a sensible operation, disengaged from that part of the 1975 Amendment that is held to be beyond power.

I must, of course, ensure that s. 22a. is allowed to have not only what I may term its severing or blue pencil effect, but also the kind of operation exemplified in Nilson v. S.A. (1955) 93 C.L.R. 292 and Pioneer Tourist Coaches Pty. Ltd. v. S.A. ibid 307, where, in both cases, a law expressed in general terms, and having a general operation, was permitted to remain unaffected in its explicit terms, but was given a restricted operation, by reference to the circumstances and transactions to which it was permitted to apply, consistent with its constitutional limitations. The limitation in those cases reflected the operation of s. 92 of the Commonwealth Constitution,but I do not understand the construction of s. 22a. adopted by the High Court to rest upon the particular constitutional limitation under consideration.

One must first enquire: In the context of the 1975 Amendment, when could it be correctly claimed that an order had "not been duly made in accordance with" the Constitution? The word "duly" is sometimes treated as if it required merely a barren compliance with external form, and had nothing to say about substance, merit, or essential validity. I am of the opinion, however, that the meaning of the word cannot here be thus restricted. One has but to consider the implications of sub-s. (7) to realize why that is likely to be so. The three paragraphs of the sub-section empower the Court, in effect, to make every kind of order with respect to the order from which the appeal is said to lie; in particular, the simple power to "vary" renders it improbable that the Court was to be confined to rectifying informalities. But, as the Solicitor-General pointed out, in a penetrating analysis of the whole of the Commission's functions and duties, the Commission is given several tasks the performance of which could scarcely be termed attendance to mere form. There may be some question whether provisions that impose positive duties are mandatory or merely directory (sub-ss. (2) and (3) of s. 82), but as to certain other provisions there can be no doubt - for example, sub-s. (5) of s. 82, s. 77, and s. 27 and sub-s. (2) of s. 32 read together. A failure to comply with any one or more of the dictates, express or implied, of those sections would, in my judgment, result in an order not "duly made". In many such cases, it would be likely that the appropriate order would be to quash and to direct a fresh redistribution. I can imagine circumstances, however, in which a variation of the order would be warranted in consequence of an exercise by the Full Court of a purely judicial function: for example, it might be found, on examination of the Commission's report and order, that its arithmetical workings and conclusions had not been accurately implemented by the boundaries drawn; it might be discovered that the boundaries drawn failed to comply with sub-s. (5) of s. 82; and yet,

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in either case, it might be plainly possible and right to secure compliance with statutory requirements by completing or amending boundaries, without in any way doing violence to the Commission's conclusions of substance.

Beyond that point, I have considerable doubts as to how far a Court of Judicature could conscientiously go in exercising its appeal functions. I assert with confidence that the Full Court has no power to consider a sub-head of appeal that contended that the Commission had failed to pay sufficient regard to one or other of the paragraphs of s. 83. A sub-head of appeal could not be entertained, either, that would ask the Full Court to conclude that there was another and better redistribution to be made because certain of the matters referred to by s. 83 could and should be resolved in a manner that was more reasonably possible, or that was more desirable and within the limits of what was practicable; or that there were matters that were relevant to which no sufficient regard had been made.

I am not sure - and I reserve my opinion on the question - whether it would even be open to an appellant to contend that because all the evidence was undisputedly one way, and because the Commission had made a re-distribution that was plainly contrary to the evidence it cannot have complied with its duty under s. 83 and had, in effect, acted perversely. It may well be that, in due course, the Full Court will be called on to rule upon a contention of this kind for the simple reason that the right of appeal is given to an elector, who is likely to be less interested in ensuring compliance by the Commission with the forms and processes laid down by the Act than in achieving what he may regard as electoral justice based on a distribution effected by an order. All that perhaps can be inferred from the 1975 Amendment is that if by the express words of, or by necessary implication from, the Commissioner's report supporting its order it incontrovertibly appeared that the Commission had not had regard to a particular paragraph at all, the Full Court might be induced to direct a fresh distribution on the ground that the order had not been duly made.

It might, of course be argued that sub-s. (2) of s. 86 has nothing to do with performance of the duties imposed by s. 83 because the sub-section is directed only to the due making of the order, and not to the work undertaken by the Commission for the purpose of arriving at a decision upon which its order is to be based. In my opinion, however, such reasoning is too refined. A decision is the hypostasis of an order, and a decision cannot be reached without considering the matters relevant to it. Neither the decision nor the order can be evaluated without understanding and appreciating the matters and considerations that produced both, any more than a judicial decree or order can be appraised without reading the reasons for judgment.

In sum, I am of the opinion that accepting, as I am of the opinion one must accept, that the Full Court can act only as a Court of Judicature, sub-s. (7), read subject to the operation of s. 22a., has - every paragraph of it - real work to do, and has conferred on the Court jurisdiction, powers, duties and responsibilities, that can be exercised and discharged without violating its essential and entrenched character. There are many functions and duties (apart from those set forth in s. 83) that the Commission is imperatively required to perform, a failure to perform which may, in my opinion, be correctly denominated a failure "duly" to make the order appealed from "in accordance with the Act"; where any such failure is alleged it may properly, in my opinion, be the subject of the Full Court's arbitrament while sitting and functioning on appeal as a Court of Judicature. Furthermore, the whole of Part V, in my opinion, presupposes that the Commission will act in good faith, and I have no doubt that, if it were ever alleged that it had failed so to act, the allegations would be a fit subject of inquiry by the Full Court upon the ground that the order would not, if the allegations were substantiated,have been duly made.

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In so far as paragraph (a), or (b), or both, might, in a given case, if read literally, appear to constrain the Full Court to pursue enquiries or to resolve issues that would lead it beyond its true function as a Court of Judicature, I am of the opinion that, consistently with s. 22a. of the Acts Interpretation Act and with Nilson v. S.A. and Pioneer Coaches v. S.A. (supra), the language of s. 86 (and the remainer of the 1975 Amendment) is susceptible of being read distributively, so that the Court is obliged to act only as a Court of Judicature may act.

I am confirmed in this conclusion by sub-s. (8) of s. 86. This section is of a kind that, subject to variations in detail, is generally comparable to like provisions to be found in Acts conferring on tribunals, other than Courts, powers to deal with industrial disputes: compare Industrial Conciliation and Arbitration Act 1972 (S.A.), s: 92. In the last mentioned Act, what is preserved is a limited power to invoke the prerogative processes; in the 1975 Amendment the purpose is to exclude all "call[ing] in question" except by the appeal provided for. It seems to me that the natural inference to be drawn from sub-s. (8) is that the appeal is to comprehend, in so far as it may validly do so, at least the same powers of review as were given by the Prerogative processes. Accordingly, even though paragraph (a) of sub-s. (7) of s. 86 might, on the face of it, seem to require the Full Court, in some circumstances, to depart from its judicial role and enter the arena of the legislator or administrator, the implications to be derived from sub-s. (8) of that section and the provisions of s. 22a. of the Acts Interpretation Act unite in preserving a review function at least as extensive as would have been given by the old Prerogative processes. The Prerogative is not to be infringed or nullified except by the clear words of a Statute or necessary implication therefrom. Obviously, the sort of review carried out under the old Prerogative writs and the substituted Prerogative processes traditionally and unquestionably belong to the judicial process.

Conclusions.

It may now be useful to summarize my conclusions.

1. The Supreme Court was, in 1837, established by an act-in-law that either was not a provincial legislative enactment (although it is found in the text of one), or was a provincial legislative enactment, and something more; in either event, what the then Governor and his appointed advisers did was at least this, namely, to exercise a power or authority duly conferred upon them by an Imperial Act of Parliament extending to South Australia, and by an Order in Council duly made under that Act. The Imperial Act and Order in Council were thereby complemented and perfected.

2. The Supreme Court was established as a Court of Judicature and nothing in any legislation passed between 1837 and 1865 purported, in terms, to vary that establishment.

3. A Court of Judicature, properly so called, in 1837 and thereafter had, and has, a special character, derived largely from the methods, processes, functions, and traditions, of the Kings Courts that evolved and were constitutionally descended from the Curia Regis of Norman days. It is essential to the character of such a Court that its paramount duty and concern is to determine the causes, matters, and proceedings, duly submitted to the Court's arbitrament, according to principles and rules of law that are binding generally on the community and on the Courts, and that are known or are reasonably predictable as being derived from received principles, and valid enactments of law-making authorities. It is essential to that same character that such a Court must not determine such causes, matters, or proceedings in accordance with the dictates of expediency

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or policy - especially in so far as future rights or interests are concerned - that are the proper concern of Parliament (and other legislators) and of the Executive (and its subordinate administratiors).

4. The Colonial Laws Validity Act 1865 (Imp.) entrenched in South Australian law, written and unwritten, the character of the Supreme Court thus conferred upon it at its establishment, in this sence, that that character cannot be altered by subsequent State legislation, though it may be altered by subsequent Imperial legislation extending to South Australia. The character of the Supreme Court became thus entrenched because the Colonial Laws Validity Act renders void any State legislation repugnant (inter alia) to the Authority, conferred by Imperial legislation upon the Governor and his Council, by a due exercise of that Authority, to create Courts and select their character.

5. It is consistent with the conclusion stated in the immediately preceding paragraph, that (as ordained by s. 5 of the Colonial Laws Validity Act 1865 (Imp.)) subsequent State legislation may abolish the Supreme Court, or abolish and re-instate it, or may add to or vary the jurisdictions with which from time to time it is seized, provided that in no case may any such reinstatement, or any such addition to or variation of its jurisdictions,have the effect of taking from it, to any degree, its character as a Court of Judicature.

6. Read in conjunction with s. 22a. of the Acts Interpretation Act, the 1975 Amendment validly confers upon the Supreme Court a jurisdiction in appeal (upon the stated ground) which it is capable of exercising in conformity with the Amendment without violating its essential character as a Court of Judicature.

In particular, circumstances connected with the making of an order may readily be imagined in which it would be proper, in pursuance of the permitted ground of appeal, for the Full Court to exercise, as the case might require, each of the powers conferred by sub-s. (7) of s. 86 of the Amendment.

7. The appeal provisions are, accordingly, to the extent indicated in this judgment, valid, and the 1975 Amendment, construed as in my opinion it ought to be construed, is not repugnant to any Imperial Act of Parliament or to any Order thereunder.

8. The declarations asked for by the writ and statement of claim in this action should be refused.

9. Even if, pursuant to s. 22a. of the Acts Interpretation Act, or to principles of constitutional law and canons of interpretation to the same effect, this Court were not constrained to read down the 1975 Amendment as, in my opinion, it must be read down, there are strong reasons, based upon clear constitutional convention and tradition, why legislation should not be read as requiring Courts to act in a manner, and upon considerations, that is and are inimical to their true function, and to the community's interest in seeing that that function is preserved.

I have reached my conclusions without adverting to an interesting line of argument presented by Mr. Fisher. If the structure and reasoning of my judgment had been otherwise, I should have found his argument,

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in principle, hard to resist. As matters now stand, I may accept the principles he contended for, and simply remark that there is, if I am right in my approach to, and construction of, s. 86, no need to ask if they are applicable. But it seems to me appropriate that I should just add this. I have no doubt that the cases on which he relied (and which are discussed in detail in the judgments of some of my colleagues) are explicable only on the ground that the judges whose functions were being examined were given their several responsibilities, notwithstanding the generality of the words of the statutes under consideration, as personae designatae. To endeavour to explain the decisions by blandly stating that a "special jurisdiction" was being conferred, or by offering some similar comforting incantation, is simply, to my mind, to mask the underlying interpretation of those statutes that Mr. Fisher's cogent discussion of the cases so strongly emphasized.

No. 10

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE JACOBS

DELIVERED 3rd NOVEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA

Action No. 1499 of 1976

Dates of Hearing: 4th, 5th, 6th, 7th and 8th October, 1976

IN THE FULL COURT

Coram: Bray C.J., Walters, Zelling, Wells and Jacobs JJ.

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3rd November 1976

J U D G M E N T of the Honourable Mr. Justice Jacobs

Counsel for the Plaintiff:	Mr. H. C. Williams Q.C. with Mr. A. H. Watson
Solicitors for the Plaintiff:	Piper, Bakewell & Piper
Counsel for the Defendants:	Mr. B. R. Cox Q.C. Mr. F. R. Fisher Q.C. with Mr. G. C. Prior
Solicitor for the Defendant:	Mr. G. C. Prior Acting Crown Solicitor

Judgment No. 3135

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3rd November 1976

(continued)

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA

Full Court

Jacobs J.

By S. 7 of the Constitution Act Amendment Act (No. 5), being Act No. 122 of 1975, which will be referred to hereafter as "the 1975 Act", the Parliament of the State set up an Electoral Districts Boundaries Commission, to be a permanent body charged with the task of making an electoral redistribution i.e. dividing the State into electoral districts for the election of the House of Assembly, whenever so required by S. 82(2) of the principal Act. That section, as are the other sections to be mentioned, is a new section incorporated in the principal Act, the Constitution Act 1934-1975 by the 1975 Act. By S. 83 the Commission is required, as far as practicable, to have regard to a number of criteria, and as the nature of these criteria is of some importance to the plaintiff's case, it is convenient to set them out, as follows:

"(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

(b) the population of each proposed electoral district;

(c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing electoral districts;

(d) the topography of areas within which new electoral boundaries will be drawn;

(e) the feasibility of communication between electors affected by the redistribution and their

parliamentary representatives in the House of Assembly;

and

(f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution,

and may have regard to any other matters that it thinks relevant."

By S. 86(1) the Commission must cause an order making an electoral redistribution to be published in the Government Gazette, and by S. 32(3) - enacted by S. 5 of the 1975 Act - an order of the Commission becomes operative upon the expiration of the prescribed period from the date of publication of the order. The prescribed period is defined in S. 32(5) to mean "(a) where no appeal has been made against the order - the period of three months from the date of publication of the order; or (b) where an appeal has been made against the order - the period extending from the date of publication of the order to the date falling three months after the day on which all appeals have been finally determined."

The reference to an appeal is a reference to Sub-sections(2) to (9) inclusive of S. 86. For present purposes it is necessary to set out only those sub-sections which are directly impugned in this action, being -

"86(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

.....

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(continued)

(7) On the hearing of an appeal under this section the Full Court may -

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient."

On 5th August, 1976 the Commission purported to make and publish an order making an electoral redistribution, as required by the 1975 Act, and on 3rd September, 1976, i.e. within one month of the publication of the order, three appeals were instituted in this Court, purportedly in pursuance of S. 82(2). Shortly thereafter, on 14th September, 1976, the writ in this action was issued, seeking declarations (a) that the said order of the Electoral Districts Boundaries Commission is of no effect and does not take effect, and (b) that Sub-sections (2) and (7) of S. 86 of the Constitution Act 1934-1975 as contained in the Constitution Act Amendment Act (No. 5) 1975 and other the provisions of the said Constitution Act Amendment Act (No. 5) 1975 are void and inoperative by virtue of repugnancy to Imperial law in that they purport to confer upon the Supreme Court of South Australia a function which is inconsistent with the established judicial character of the Court.

As the plaintiff's case was developed, however, it became clear that declaration (a) was consequential on the making of declaration (b), upon the footing that if the impugned appeal provisions are void and inoperative, then the order of the Commission which is subject to appeal cannot take effect. This result is said to follow either because the appeal provisions are demonstrably such an integral part of the new machinery for

determining electoral boundaries by order of the newly made Electoral Districts Boundaries Commission that they cannot be severed, or alternatively because S. 32 of the principal Act, as amended by the 1975 Act, contemplates the order for redistribution taking effect only upon the expiration of the 'prescribed period' where 'an appeal' has been made. If the later provisions of the 1975 Act authorising an appeal to the Supreme Court are held void and inoperative, it is said that something in the nature of an 'appeal in escrow' nevertheless survives to prevent the order of the Commission from taking effect. There seems to me to be some difficulty, to say the least, in the notion of an appeal without an appellate tribunal, but other questions need to be answered before the issue of severance, partial or otherwise, arises.

Reduced to its essentials, the plaintiff's case depends upon three propositions, (1) that the Supreme Court of South Australia was established by Imperial legislation as a 'court of judicature'; (2) that the appellate function of the Court under the 1975 Act is either legislative or administrative (or both), and, however characterised, is inconsistent with and repugnant to the proper function of the 'court of judicature' established as aforesaid; and (3) that S. 2 of the Colonial Laws Validity Act (Imp.) 1865, renders the 1975 Act, as a 'colonial law', void and inoperative to the extent of such repugnancy. I deal as briefly as possible with each of these propositions.

1. <u>The Establishment of the Court</u>

It is not necessary for me to repeat in detail the provisions of the relevant Imperial Acts and Orders in Council, and the Provincial Ordinances, some of which are set out in earlier judgments. The starting point is 4 and 5 William IV Ch. 95 (1834) - which I shall call the 1834 Act - which (inter alia) declared that His Majesty in Council might "authorise and empower any one or more persons resident and being within..... the said Province(s) to make ordain and establish all such Laws

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(continued)

Institutions and Ordinances and to constitute such Courts....as may be necessary for the Peace Order and good Government of His Majesty's Subjects.....within the said Province." All such orders laws and ordinances were to be laid before the King in Council and were not to be contrary or repugnant to "any of the provisions of this Act." Pursuant to this Act, an Order in Council was made on 23rd February, 1836, conferring authority on the holders of the various offices named therein, or any three of them, "to make ordain and establish" in the Province "laws institutions and ordinances" and "to constitute Courts" in terms of the 1834 Act. All such legislative acts were subject to disallowance by His Majesty, but remained in force unless and until disallowed.

Against that background, the Court traces its origin to Ordinance No. 5 (1837), entitled "An Act for the establishment of a Court to be called the Supreme Court of the Province of South Australia." It purports to be enacted by the Governor, Sir John Hindmarsh "by and with the advice and consent of the Legislative Council" and was 'passed in Council' on 31st May, 1837. The Court thus erected created constituted and established was a Court of Judicature to be called the Supreme Court of South Australia. The Court was given a jurisdiction similar to the Court of King's Bench, Common Pleas and Exchequer, it was a Court of Oyer and Terminer and Gaol Delivery, a Court of Equity and a Court of Ecclesiastical Jurisdiction with power to grant probate and letters of administration.

In my opinion it is impossible to regard this Ordinance as an Act of Parliament, i.e. the Imperial Parliament, either within the meaning of the Colonial Laws Validity Act 1865, or at all, and there is nothing in its subsequent history to alter that view. In 1838, by 1 and 2 Victoria Ch. 60, the powers and authorities vested in His Majesty by the 1834 Act were repealed (not, be it noted, the Act itself) and substantially re-enacted in favour of the new Queen, but without any express saving provision in respect of the prior exercise of those powers and authorities.

This omission, if omission it was, appears to have been filled in 1842 by 5 and 6 Victoria Ch. 61, which repealed the Acts of 1834 and 1838, with the proviso that "all Laws and Ordinances heretofore passed under the Authority and in pursuance of the said recited Acts or either of them, and all Things heretofore lawfully done in virtue of the said Acts or either of them, shall hereafter be of the same Validity as if the said Acts had not been repealed". Counsel for the plaintiff seized upon the apparent dichotomy between laws and ordinances passed under the authority of the repealed Acts on the one hand, and things done in virtue of the said Acts on the other. The establishment of the Court, so the argument goes, is to be characterised as "a thing done" which derived legislative approval only from the Imperial Act of 1842. I am unable to see why the Court established by Ordinance No. 5 of 1837 should be so characterised, or why it cannot be said, for present purposes, that the 1842 Act simply recognized the validity of that Ordinance. Thus to recognise and confirm the 'colonial law' however, does not make that law an Act of the Imperial Parliament. It is one thing to say that the Supreme Court was created by a Local Ordinance made under the authority of an Imperial Act, and subsequently recognised by such an Act as having been validly created, but quite a different thing to say, as the plaintiff says, that it was created by an Imperial Act.

It is important, however, to notice at this stage an argument, based upon certain reasoning to be found in ex Parte McLean 43 C.L.R. 472 @ 484-5 which, if accepted, would lead to a conclusion contrary to that which I have reached. An analogy is sought to be drawn with a Federal Award, made under the authority of the Commonwealth Conciliation and Arbitration Act, as a 'law of the Commonwealth' for the purposes of S. 109 of the Commonwealth Constitution, which invalidates the law of a State where and to the extent that it is inconsistent with a law of the Commonwealth. So, it is said, the 1837 Ordinance made under the authority of the 1834 Act must be regarded as an Imperial Law

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Reasons for Judgment of the Honourable Mr. Justice Jacobs

3rd November 1976

(continued)

to which the 'colonial law' of 1975 is (so the argument will proceed) repugnant.

The analogy to my mind is imperfect. In the first place, the Ordinance of 1837 was not made by a subordinate law-making authority established by the Imperial Parliament. On the contrary, Parliament vested in His Majesty in Council the power to set up the colonial legislature, and it was the King in Council, not Parliament, which had the power of veto or disallowance. Further than that, however, it seems to me that the argument ignores the terms of the 1834 Act in another respect. That Act enjoins upon the residents of the new province obedience to "such Laws, Orders, Statutes, and Constitutions as shall from time to time, in the Manner hereinafter directed, be made, ordered, and enacted for the Government of His Majesty's Province.... of South Australia."

The words I have underlined seem to me to be inconsistent with the notion that such Laws Order and Statutes are nevertheless to be treated as having been made by the Imperial Parliament itself.

A brief reference to subsequent Imperial Legislation and the later history of the Court confirms me in my view that the Ordinance of 1837 is not to be regarded as an Imperial Act. In 1850, by 13 and 14 Victoria Ch. 59 provision was made for representative Government in the Australian Colonies; by Act No. 2 of 1856, an Act to establish a Constitution for South Australia, passed by the legislative council of the Province under the authority of the 1850 Imperial Act and reserved for Her Majesty's assent on 4th January, 1856, a bicameral Parliament was established; and later in the same year came Act No. 31 of 1856, a new Supreme Court Act. In begins with a recital of the establishment of 'a Court of Judicature called the Supreme Court of the Province of South Australia' by Ordinance No. 5 of 1837, and concludes with a repeal of that Ordinance. If the plaintiff's first proposition is correct, then of course Act No. 31 of 1856 had the effect of repealing Imperial legislation. If the ghost of Mr. Justice Boothby were stalking the corridors of the Court, such a statement would

undoubtedly bring a smile of grim satisfaction to his face: he might almost be heard to mutter "I told you so". It was in the face of just such a contention that the Colonial Laws Validity Act was passed by the Imperial Parliament in 1865. In particular, S. 5 of that Act provides that "Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein.....". Much has been written about that section, but there can be little doubt that the intention (inter alia) was to confirm the validity of Act No. 31 of 1856 - the Supreme Court Act - and to concede, by necessary implication, that the 'colonial legislature' - defined as the authority competent to make laws for any colony - made the 1837 Ordinance which was purportedly repealed in 1856. But the plaintiff says the 1865 Act failed in that intention; that No. 31 of 1856 did not establish a court of judicature, but only continued a Court already established; that the power to abolish and reconstitute 'the same' extended only to a court of judicature established by a colonial legislature and the Supreme Court of South Australia is established (according to the plaintiff) by Imperial legislation; and that in any event the power of the colonial legislature, even if confirmed in all relevant respects, was nevertheless a power with respect only to a 'Court of Judicature'.

Such a view of the Imperial legislation in 1850 and 1865 produces a result which in my view is so absurd as to require its rejection, for if pursued to its logical conclusion, it would seem to follow that the Supreme Court established by the Ordinance of 1837 is entrenched, immutable, not merely (as the plaintiff contends) as 'a court of judicature' exclusively, but with the jurisdiction said to have been entrusted to it by the legislative Acts of the Imperial Parliament between the years 1834 and 1842 and upon which the plaintiff relies to give to Ordinance No. 5 of 1837 its Imperial status. I see no escape from the conclusion that if it is

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(continued)

repugnant, pro tanto, to the 1837 Ordinance to confer upon the Court a non judicial function, a function incompatible with the court of judicature thus established, it would be equally repugnant to remove from the Court, by way of example, its probate jurisdiction. I am not prepared to hold that the plenary power of the State Parliament in 1976 is thus fettered.

The plaintiff sought to derive further support for his view of the entrenched and exclusively judicial function of the Court by reference to the Constitution of the Commonwealth of Australia, itself an Act of the Imperial Parliament. While conceding that the doctrine of separation of powers is not part of the constitutional law of the State, it was suggested that the influence of that doctrine in the interpretation of the Commonwealth Constitution, and in particular on the judicial power of the Commonwealth, colours the role of the Supreme Courts of the States from which an appeal lies to the High Court, under S. 73 of the Constitution. There is said to be some necessary implication or assumption not merely that the Supreme Courts of the several States are entrenched, but that they have the same strictly judicial function as the High Court. In my opinion, the argument cannot stand with the concession that counsel necessarily and properly made. I find it unnecessary to canvass the cases that were cited, beyond observing that they appear to establish that the High Court would simply decline jurisdiction if the decision appealed from could not be characterised as "a judgment decree, order, or sentence of the Supreme Court."

2. Repugnancy to Imperial Law

As the plaintiff's first proposition, which in my judgment cannot be upheld, was the linchpin of the plaintiff's case, it is strictly unnecessary for me to consider the question of repugnancy, which can only arise upon the footing that the 1837 Ordinance is properly to be regarded as an Imperial Act. In case my view upon that is incorrect, however, I propose to say something about the question of repugnancy. That question necessarily involves a consideration not only of the role assigned to the Court

by the 1975 Act, but of the scope and extent of its powers. This last-mentioned question may also arise if and when the Court comes to consider the appeals, but as the Commission, which is by Statute made the respondent to an appeal, has not had an opportunity to address any argument as to the extent of the Court's powers, I desire to say no more than is absolutely necessary on that topic.

In providing for an appeal to the Supreme Court, the 1975 Act limits such appeal to one and only one ground, namely "that the order has not been duly made in accordance with this Act." In my judgment it cannot be properly asserted that the Court is thus given cognisance of a matter in a way which goes beyond the judicial function of a Court of Judicature. I do not pause to consider what are, or ought to be, the limiting characteristics of a court of judicature. It is sufficient to say that it is an every-day task for such a Court to consider whether a statutory authority has or has not exceeded the bounds of its statutory charter. That must surely be trite law, and there is nothing in the charter of the Commission which leads to the conclusion that the Court, in examining compliance with that charter, is required to cast aside its judicial function. Undoubtedly the most contentious section is S. 83, quoted earlier in this judgment, which recites the matters to be taken into account, but it does no more than require the Commission, as far as practicable to have regard to those matters. On appeal, this Court must determine whether it has done so, but that task would not appear to be essentially different from the review by this Court of the exercise of a discretion, whether judicial or administrative, by an inferior tribunal. Thus if the Court were satisfied that no reasonable tribunal properly directing itself could make the order which it did, if regard is had to the relevant criteria, it would be open to the Court to conclude that the Commission had acted in disregard of the Act. Many analogies come to mind. I mention only one. By S. 47 of the Licensing Act 1967-1975 an applicant for a new licence must satisfy the Court, inter alia

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(continued)

that the licensing of the premises is required for the needs of the public having regard to the licensed premises existing in the locality in which the premises are to be situated. It is for the Licensing Court to determine what is the relevant locality, which is very largely a matter of discretion, but on a review of the exercise of that discretion, it would be clearly open to this Court to question, and if necessary to decide for itself, the relevant locality. Reviewing lines drawn on a map, or even drawing fresh lines, is not necessarily contrary to the proper judicial functions of this Court, as counsel for the plaintiff seemed to suggest.

The plaintiff, however, goes further than that. He says that the appellant role given to this Court necessarily requires it to take upon itself the task of the Commission; that such a task is really a legislative or quasi-legislative task, since it is for Parliament to determine its own membership and composition; and the Commission, and hence the Court, is the delegate of the Parliament. This argument, that the role of the Commission is also the role of the Court, is then re-inforced by reference to the remedies which the Court can give. In particular, it is said that the power to 'vary' the order of the Commission enables the Court in effect to make a different electoral redistribution. If the word 'vary' is indeed as wide as that, it would in my view be necessary to read it down so that the Act does not exceed the legislative powers of the State (Acts Interpretation Act S. 22a), but I am disposed to think that, as a matter of construction, the power is not as wide as the plaintiff says. The remedies provided ought to be construed having regard to the right to a remedy. That is a right which arises if the order has not been duly made in accordance with the Act. The nature of non-compliance must have a bearing on

the remedy. In some cases of non-compliance, it may be possible to vary the Commission's order without making a fresh electoral re-distribution, but if the nature of the non-compliance is such that the electoral re-distribution of the Commission cannot stand, then it seems to me that the clear intention of Parliament, if a fresh electoral re-distribution has to be made, is that the Commission and not the Court must make it. Whatever may be the content of the power to vary, it seems to me that if Parliament had intended this Court to have the same power as the Commission to make an electoral re-distribution, or to substitute its own electoral re-distribution for that of the Commission, in the event of appealable error, it would have chosen different and more apt language to say so.

For these reasons I would hold, so far as it may be necessary to do so, that the 1975 Act is not repugnant to the Ordinance of 1837 so as to attract the operation of S. 2 of the Colonial Laws Validity Act 1865, upon the footing (contrary to the conclusion reached earlier in this judgment) that the two legislative acts are respectively to be seen as a colonial act and an Act of (Imperial) Parliament. I would hold this to be an example of the statutory jurisdiction referred to by Dixon J. (as he then was) as "a statutory power of jurisdiction.....added to the powers and jurisdiction belonging to a Court..... made exercisable in virtue of that very character (Medical Board of Victoria v. Meyer (1937) 58 C.L.R. 62 @ 97). There is therefore no need to consider the further argument, advanced by Mr. Fisher Q.C. as a counter to the plaintiff's case, that in the context of this legislation the judges comprising the appellate Court are to be regarded as personae designatae, rather than as the Supreme Court, and thus escape whatever restrictions are to be attached to a 'court of judicature'. I am disposed to think, however, that some formidable obstacles stood in Mr. Fisher's path.

I desire only to add that having had the advantage, since preparing my own reasons, of

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Reasons for Judgment of the Honourable Mr. Justice Jacobs
3rd November 1976
(continued)

reading the judgment of Wells J., I entirely agree with the way in which he has characterised a 'Court of Judicature'. Whether or not there is any relevant Imperial fetter on the plenary power of the State Parliament, I would hope that constitutional conventions are strong enough to sustain this Court and its judges in their proper judicial function, untrammelled by any legislative attempt to make the Court the tool of Parliament or the Executive, or to require the judges to act otherwise than in an independent judicial role.

I would dismiss the action.

No. 11
Order of the Full Court dismissing action
3rd November 1976

No. 11

ORDER OF THE FULL COURT DISMISSING ACTION

3rd NOVEMBER 1976

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1499 of 1976

B E T W E E N :

JAMES BARTON GILBERTSON

Plaintiff

- and -

THE STATE OF SOUTH AUSTRALIA and THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

Defendants

No. 11

Order of the Full Court dismissing action

3rd November 1976

(continued)

BEFORE THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE WALTERS
THE HONOURABLE MR. JUSTICE ZELLING
THE HONOURABLE MR. JUSTICE WELLS AND
THE HONOURABLE MR. JUSTICE JACOBS

WEDNESDAY THE 3rd DAY OF NOVEMBER, 1976

THIS ACTION coming on for hearing before the Full Court of this Court on the 4th, 5th, 6th, 7th and 8th days of October, 1976 on the questions of law arising on the pleadings pursuant to the order herein of the Honourable Mr. Justice Walters dated the 16th day of September 1976 AND UPON HEARING Mr. Williams Q.C. and Mr. Watson of counsel for the plaintiff and Mr. Cox Q.C., Mr. Fisher Q.C. and Mr. Prior of counsel for the defendants THE COURT DID RESERVE JUDGMENT and the same standing for judgment this day THIS COURT DOTH ORDER that the plaintiff's action do stand dismissed out of this Court and that the plaintiff do pay to the defendants their costs of the action to be taxed AND DOTH ADJUDGE the same accordingly.

BY THE COURT

MASTER

THIS ORDER was filed by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 12

No. 12

Order of the Full Court granting leave to plaintiff to amend statement of claim 5th November 1976

ORDER OF THE FULL COURT GRANTING LEAVE TO PLAINTIFF TO AMEND STATEMENT OF CLAIM

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1499 of 1976

No. 12

Order of the Full Court granting leave to plaintiff to amend statement of claim 5th November 1976

(continued)

B E T W E E N :

JAMES BARTON GILBERTSON

Plaintiff

- and -

THE STATE OF SOUTH AUSTRALIA and THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

Defendants

BEFORE THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE WALTERS
THE HONOURABLE MR. JUSTICE ZELLING
THE HONOURABLE MR. JUSTICE WELLS AND
THE HONOURABLE MR. JUSTICE JACOBS

FRIDAY THE 5th DAY OF NOVEMBER, 1976

UPON THE APPLICATION of the abovenamed plaintiff AND UPON HEARING Mr. Williams Q.C. and Mr. Watson of counsel for the plaintiff and Mr. Cox Q.C., Mr. Fisher Q.C. and Mr. Prior of counsel for the defendants IT IS ORDERED that the plaintiff be at liberty to amend his Statement of Claim herein by deleting the words "and the Imperial Act 63 & 64 Victoria Ch. 12 (Commonwealth of Australia Constitution Act)" from paragraph 8 thereof.

BY THE COURT

MASTER

THIS ORDER was filed by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 13

No. 13
Order of the Full Court granting conditional leave to appeal to Her Majesty in Council
5th November 1976

ORDER OF THE FULL COURT GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1499 of 1976

B E T W E E N :

JAMES BARTON GILBERTSON

Plaintiff

- and -

THE STATE OF SOUTH AUSTRALIA and THE ATTORNEY GENERAL FOR THE STATE OF SOUTH AUSTRALIA

Defendants

BEFORE THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE WALTERS
THE HONOURABLE MR. JUSTICE ZELLING
THE HONOURABLE MR. JUSTICE WELLS AND
THE HONOURABLE MR. JUSTICE JACOBS

FRIDAY THE 5th DAY OF NOVEMBER, 1976

UPON MOTION made unto this Court this day on behalf of the abovenamed plaintiff for leave to appeal to Her Majesty in Council from the judgment herein of the Full Court of this Court dated the 3rd day of November 1976 pursuant to notice of motion dated the 3rd day of November 1976 AND UPON HEARING Mr. Williams Q.C. and Mr. Watson of counsel for the plaintiff and Mr. Cox Q.C., Mr. Fisher Q.C. and Mr. Prior of counsel for the defendants THIS COURT DOTH ORDER that the plaintiff be and he is hereby granted conditional leave to appeal to Her Majesty in Council upon the following conditions :

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Order of the Full Court granting conditional leave to appeal to Her Majesty in Council

5th November 1976

(continued)

I. That the appellant do within 21 days from this date enter into good and sufficient security to the satisfaction of the Court in the sum of £500 (sterling) for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondents in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the appellant to pay the respondents' costs of the appeal (as the case may be);

II. That the appellant do as a matter of urgency take and pursue all necessary steps for the purpose of procuring the preparation of the Record and its despatch to England, and to that end

(i) The appellant shall accept any reasonable proposal promptly made by the second respondent that he should himself arrange for the printing of the Record in South Australia, on behalf of and at the cost of the appellant, provided that the said printing cost shall be no more than the Registrar certifies to be reasonable;

(ii) If the second respondent so requests and meets the expense of so doing regardless of the outcome of the appeal, the Registrar shall make the transmission referred to in Rule 11 by airmail or air freight.

BY THE COURT

MASTER

THIS ORDER was filed by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Plaintiff.

No. 14

REASONS FOR JUDGMENT OF THE FULL COURT RELATING TO AMENDMENT OF STATEMENT OF CLAIM

No. 14
Reasons for Judgment of the Full Court relating to amendment of statement of claim

7th December 1976

DELIVERED 7th DECEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (No. 2)

No. 1499 of 1976

Date of Hearing: 5th November, 1976

IN THE FULL COURT
Coram: Bray C.J., Walters, Zelling, Wells and Jacobs JJ.

J U D G M E N T of the Honourable the Chief Justice
the Honourable Mr. Justice Walters
the Honourable Mr. Justice Wells
the Honourable Mr. Justice Jacobs

(Application for leave to amend statement of claim)

Counsel for the Plaintiff: Mr. H.C.Williams,O.C. with Mr. A.H. Watson

Solicitors for the Plaintiff: Piper, Bakewell & Piper

Counsel for the Defendants: Mr. B.R. Cox, O.C.
Mr. F.R. Fisher,O.C.
with Mr. G.C. Prior

Solicitor for the Defendant: Mr. G.C. Prior, Crown Solicitor

No. 14
Reasons for Judgment of the Full Court relating to amendment of statement of claim

7th December 1976 (continued)

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR SOUTH AUSTRALIA

Full Court

Bray C.J.

When the application for leave to the Privy Council was called on Mr. Williams applied to amend paragraph 8(b)of the statement of claim.

That paragraph reads:

"(b) The plaintiff in reliance upon the Imperial Act 28 & 29 Victoria Ch. 63 (Colonial Laws Validity Act 1865) alleges that the Constitution Act Amendment Act (No.5) 1975 in its purported operation as aforesaid is repugnant to the Imperial Act 4 & 5 Wm. IV Ch. 95 and things done pursuant thereto (as mentioned in paragraph 7 (b) hereof) and to the Imperial Act 5 & 6 Victoria Ch. 61 and the Imperial Act 63 & 64 Victoria Ch. 12 (Commonwealth of Australia Constitution Act) and to such extent is void and inoperative."

The application was to strike out the words "and the Imperial Act 63 & 64 Victoria Ch.12 (Commonwealth of Australia Constitution Act)".

The application was supported by the Solicitor-General for the defendants. Apparently it was feared that the question of whether the amending Act of 1975 is void for repugnancy to the Commonwealth Constitution might be regarded as a matter involving the interpretation of the Constitution within the meaning of sec.30(a) of the Judiciary Act 1903 as amended, and hence that it might be held that in deciding the case we were exercising federal jurisdiction within the meaning of sec.39(2) of the Judiciary Act, so that by virtue of sec.39(2)(a) our decision was not subject to appeal to Her Majesty in Council.

It is very unusual to allow an amendment to the pleadings after judgment, even if before the order of the court has been perfected, but as it was the wish of both sides that the amendment should be made we allowed it and said we would deliver our reasons later. I now deliver these reasons on behalf of Walters J., Wells J., Jacobs J. and myself.

Certainly the presence of those words in the

original statement of claim might appear to raise the question of the invalidity of a State Act by reason of repugnancy to the Constitution. Mr. Williams said that any such contention was not really part of his case. Some members of the court certainly understood him to have advanced an argument that sec.73 of the Commonwealth Constitution made it impossible for a State Parliament to confer non-judicial functions on this court (though not on members of the court as personae designatae),because no appeal could lie to the High Court from an order of ours made in the exercise of such non-judicial functions, and the transcript of the argument lends considerable support to that view. Other members of the court thought that the reference to sec.73 was only made by way of illustration and to point up the difficulties which could allegedly arise from the exercise or purported exercise of non-judicial functions by this court.

Mr. Williams now repudiates any such argument and the Solicitor-General accepts it that none was intended.

Of course, if it were clear that a question relating to the Commonwealth Constitution were involved in the case we could not have given leave to appeal to the Privy Council and it is by no means certain that the allowance of the amendment at this stage could have put the matter right. As it is highly doubtful whether the argument in question was ever intended to be advanced, and as it is now repudiated and the point abandoned, and indeed now said never to have been meant to be taken, we think that we can grant leave to appeal to Her Majesty in Council, as the public importance of the questions involved certainly deserves, having by this addendum drawn the matter to the attention of their Lordships.

We should add that there is authority for the proposition that the relevant sections of the Judiciary Act only begin to operate if the constitutional point "really and substantially arises": In re an Application by the Public Service Association of New South Wales 75 C.L.R.430 per Williams J. at p. 433; the allegations and pleadings relating to it must be more than "merely colourable"; they must be "real and not mere pleading allegations" Hopper v. Egg and Egg Pulp Marketing Board (Vict.) 61 C.L.R. 665 per Starke J. at p.677. We are now assured that the constitutional point was no more than a pleading allegation and was not intended to be raised really or substantially and we accept that assurance.

We might add that apart from any question of pleadings or argument we would not ourselves of our own motion have perceived any point in the case involving the Commonwealth Constitution or its interpretation or any federal point at all.

No. 14
Reasons for Judgment of the Full Court relating to amendment of statement of claim

7th December 1976

DELIVERED 7 DECEMBER 1976

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (No. 2)

No. 1499 of 1976

Date of Hearing:- 5th November, 1976

IN THE FULL COURT

Coram: Bray,C.J., Walters, Zelling, Wells and Jacobs J.J.

J U D G M E N T of the Honourable Mr.Justice Zelling
(application for leave to amend Statement of Claim)

Counsel for the Plaintiff: Mr.H.C.Williams, Q.C. with Mr.A.H. Watson

Solicitors for the Plaintiff: Piper, Bakewell & Piper

Counsel for the Defendants: Mr. B.R. Cox, Q.C.
Mr. F.R. Fisher, Q.C. with Mr. G.C. Prior

Solicitor for the Defendants: Mr. G.C. Prior, Crown Solicitor.

Judgment No. 3176

GILBERTSON v. THE STATE OF SOUTH AUSTRALIA AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (No. 2)

No.14
Reasons for Judgment of the Full Court relating to amendment of statement of claim

7th December 1976

Full Court

Judgment of Zelling J. :

After judgment had been delivered in this matter, dismissing by a majority the plaintiff's claim, the plaintiff applied to us for conditional leave to appeal to Her Majesty in Council.

(Continued)

On the hearing of that application the plaintiff applied to amend his Statement of Claim by deleting from paragraph 8 (b) part of the concluding words of that subparagraph namely the words "and the Imperial Act 63 & 64 Victoria Ch. 12 (Commonwealth of Australia Constitution Act.)."

We heard argument on the application to amend. The application was supported by the Solicitor-General for the defendants and we gave leave to amend the Statement of Claim in the manner requested by Mr. Williams for the plaintiff and intimated that we would give reasons later for allowing the amendment and this, speaking for myself, I now do.

The application for amendment involved two issues: first, whether an amendment was competent to be made at all after judgment had been given in this action, and secondly whether prior to the making of the amendment the Court was exercising federal jurisdiction and accordingly that no appeal lay to Her Majesty in Council. The reason for this latter point is that if the jurisdiction was federal, the Supreme Court was invested with federal jurisdiction to hear the matter under Section 39 (2) of the Judiciary Act 1903-1968 but that section makes the investment of federal jurisdiction subject to a condition that a decision of a Court sitting in federal jurisdiction shall not be subject to appeal to Her Majesty in Council whether by special leave or otherwise: see Section 39 (2) (a) of that Act, and see the judgment of the High Court of Australia in Felton v. Mulligan (1971) 124 C.L.R.367.

No. 14
Reasons for Judgment of the Full Court relating to amendment of statement of claim

7th December 1976

(continued)

The two questions are entirely separate and I shall accordingly deal with them separately.

Turning to the first question as to whether the application was competent at all, Order 28 Rule 1 of the Supreme Court Rules reads as follows:-

"The Court or a Judge may, at any stage of the proceedings allow either party to alter or amend his indorsement or pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

This Court, subject to the federal question with which I shall deal later, was still seized of the proceedings for the purpose of considering the application for special leave to Her Majesty in Council and accordingly in my opinion it was still at a stage of the proceedings" when the application was made to it.

As was pointed out by Thesiger L.J. as long ago as 1878 in Tildesley v. Harper 10 Ch.D. 393 at 397 "the object of these rules (sc. the rules relating to amendment) is to obtain a correct issue between the parties". Mr. Williams contended, and it was not disputed by the Solicitor-General, that he had not argued that any repugnancy existed between the provisions of the Constitution Act Amendment Act, 1975 of the Parliament of South Australia and any provision of the Commonwealth of Australia Constitution Act 1900. That certainly was my own impression of the argument. As I heard Mr. Williams, I understood him to be using the verbiage of the 1900 Act merely to illustrate an argument which he was putting in relation to the proper construction of the earlier Acts, on which he did rely, but I did not understand him to be arguing that the Constitution Act Amendment Act 1975 or so much of it as he was attacking, was in any way repugnant to the Commonwealth of Australia Constitution Act 1900. Accordingly the amendment, if made, would reflect the true issue between the parties. There is no doubt that amendments to pleadings can be made after judgment given in an action: see The Dictator 1892 P. 64. If the amendment were not made it would

mean that the case would proceed on an assumed state of the facts in relation to the arguments actually presented to the Court which was in my opinion at variance with and bore no relation to the true facts and in that case the amendment was rightly made: see the judgment of Jenkins L.J. in G.L. Baker Ltd. v. Medway Building and Supplies Ltd. /1958/1 W.L.R. 1216 at 1236. Indeed amendments for this purpose have been made when a case went on appeal; Baker's case itself is one such example. Other examples are Ellis v. Scott (No.2) /1965/ 1 W.L.R. 276 and the judgment of the High Court of Australia in Matthews v. The Chicory Marketing Board (Victoria) (1938) 60 C.L.R.263. Accordingly I conclude that there was nothing to prevent the application of Order 28 Rule 1 to the circumstances of this case and that subject to the point which I shall now proceed to discuss relating to the operation of Section 39 of the Judiciary Act, the amendment was properly made; see also an article The Amendment of Pleadings in 227 Law Times Journal 141.

The second question turns on the problem: when does a State Court become invested with federal jurisdiction; when pleadings are filed raising a federal question, or when the matter comes for determination by the Court. If the first is the true position then we were at all times exercising federal jurisdiction and the amendment comes too late. If the second is correct we have not determined the federal jurisdiction point because we were not called upon to do so and the amendment can properly be made and as a result leave can properly be granted to appeal from the judgment of this Court to Her Majesty in Council.

The concept of the adoption of federal jurisdiction is discussed and analysed in his usual acute way by Dixon J. in an article The Law and the Constitution in 51 L.Q.R. 590 and in particular at pages 607-608. This "extraordinary conception" as he properly calls it has produced an intricate body of doctrine. Nobody who has been condemned to study that body of doctrine would dissent from his next comment "the subleties and refinements which it has developed form a special and peculiarly arid study". Regrettably the aridity of the area has not in relation to the seed planted in it had the consequences adverted

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7th December 1976 (continued)

to by St. Matthew in the Thirteenth Chapter of his Gospel, and it is necessary to undertake a detailed discussion of the commentaries and cases on the subject.

Quick and Garran - Commentaries on the Constitution page 790 paragraph 329 say that the words "arising under this Constitution" are taken from United States authority and refer to a quotation from Story's Commentaries paragraph 1647 where after setting out a large number of cases in which a matter of this sort could arise go on to say "in these and many other cases the question to be judicially decided would be a question arising under the Constitution". They go on to say "Substituting 'Commonwealth' for 'the United States' the above illustrations by Story are applicable to this Constitution; and many others may be given." Quick and Groom in their book The Judicial Power of the Commonwealth at pages 125-126 expand on the matters referred to in the earlier book of Quick and Garran and say at page 126 --

> "If from the question involved in a suit, it appears that some title, right, privilege, or immunity, on which the recovery depends will be defeated by one construction of the Constitution, or any law of the United States, or sustained by the opposite construction, the case will be one arising out of the Constitution, or laws of the United States within the constitutional meaning of those expressions."

The first occasion on which some confusion arose between the two periods at which it might be thought that federal jurisdiction was being exercised comes in the early case of Miller v. Haweis (1907) 5 C.L.R.89. The headnote in my opinion quite correctly states the law:

> "A Court of Summary Jurisdiction of a State exercises federal jurisdiction within the meaning of Section 32(2)(d) of the Judiciary Act 1903, if it be necessary in the particular case for the Court to decide any question arising out of the Constitution or involving its interpretation.
>
> If, however, whether that question is

answered rightly or wrongly, the Court answers another question, not arising out of the Constitution or involving its interpretation, and their answer to that other question enables them to decide the case, the Court does not exercise federal jurisdiction . . . .".

However in the judgment of the Court delivered by Griffith J. at page 93 Griffith C.J. says --

> "A question of federal jurisdiction may be raised upon the face of a plaintiff's claim, as in Baxter v. The Commissioners of Taxation (N.S.W.) 4 C.L.R. 1087 at 1136, or may be raised for the first time in the defence, but as soon as the question is raised, if the jurisdiction of the State Court has been taken away, it must stay its hand."

However it is clear from the remarks of Griffith C.J. made further down on the same page that he is really dealing with the pleadings as an adjunct to the determination of the case and not as in themselves raising the question of federal jurisdiction for he says --

> "But, in order that the jurisdiction of a Court, which starts with jurisdiction may be ousted, the case must be such that it is necessary to determine a question of federal jurisdiction in order to decide the case."
> (The underlining is mine).

Accordingly the words of Griffith C.J. which have been cited by some authors to support investment at the pleading stage do not when read with the later words which I have cited, bear out their proposition.

As Starke J. said in The Commonwealth v. Limerick Steamship Company Limited (1924) 35 C.L.R. 69 at 114:-

> "Federal jurisdiction means authority to exercise the judicial power of the Commonwealth." (The underlining is mine).

Here we were not called upon to exercise federal jurisdiction. The question was raised by the

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7th December 1976 (continued)

pleadings but we were never called upon to exercise federal jurisdiction to pronounce upon it.

Williams J. said in The King v. Bevan; ex parte Elias and Gordon (1942) 66 C.L.R. 452 at 480 --

"Under sec. 30 of the Judiciary Act the Court has original jurisdiction in all matters arising under the Constitution or involving its interpretation.

A constitutional question arises when its determination becomes necessary upon the ascertained or asserted facts of the case (Australian Commonwealth Shipping Board v. The Federated Seamen's Union of Australasia (1925) 36 C.L.R. 442 at page 451)."

And the same Judge said in Carter v. The Egg and Egg Pulp Marketing Board for the State of Victoria (1942) 66 C.L.R. 557 at 602:-

> "Previous decisions of this Court, several of which are referred to in R. v. Bevan (supra) have established that a constitutional question arises when its determination becomes necessary upon the ascertained or asserted facts of the case."

Williams J. puts the matter in a slightly different way in In re an Application by the Public Service Association of New South Wales (1947) 75 C.L.R. 430 at 433 when he refers to a cause "really and substantially arising under the Constitution or involving its interpretation" and it cannot be doubted that in the argument before us no cause or part of a cause really and substantially arose under the Commonwealth Constitution or involved its interpretation.

Unless the federal argument is raised and decided the matter is not one in federal jurisdiction: see the joint judgment of Dixon C.J., McTiernan, Williams, Webb, Fullagar and Kitto JJ. in Collins v. Charles Marshall Proprietary Limited (1955) 92 C.L.R. 529 at 541. Even if it be said that the argument by analogy used by Mr. Williams in relation to Section 73 of the Commonwealth Constitution so as to illustrate the argument he was really putting,

involved the construction of Section 73 and I do not think that it did, that would not of itself be sufficient: see the judgment of Barwick C.J. in Felton v. Mulligan (supra) at page 374.

It is true that Walsh J. in Felton v. Mulligan at page 402 uses words which suggest that a State Court may be invested with federal jurisdiction merely by the claim being one which is founded upon a Commonwealth law as well as one where an issue is subsequently raised and the proceedings are such that an adjudication of the case requires or may require that a decision be given upon a federal question but his second question on that page shows clearly that adjudication of the federal question is an essential element in that process and his instances at the top of page 404 and his discussion of the instant case then before him, in the major paragraph on page 404, shows that adjudication is an essential element in the exercise of federal jurisdiction by a Court. He says further on at page 408 of the same case --

> "In these circumstances I am of the opinion that the hearing and determination of the suit involved the making of a decision upon a matter 'arising under' a law of the Parliament of the Commonwealth, namely, the Act." (The underlining is mine).

In Felton v. Mulligan it is of course true that the question of jurisdiction arose under a law of the Commonwealth and not under the Commonwealth Constitution but I cannot think that that alters the position. See also Lane: The Australian Federal System (1972) pages 529 and 530.

It may of course be necessary to decide at an earlier stage than the actual determination of the issues, whether factual or legal or both, whether or not federal jurisdiction has been invoked because the defendant may, if the matter is set down in the original jurisdiction of the High Court of Australia, demur that the claim is not in truth within that jurisdiction: see James v. The State of South Australia 1927

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7th December 1976 (continued)

A.L.R. 334 at 336 where this course was adopted. However it is clear from that case that it is a determination, even on demurrer, which is involved. In that particular case the operation of the South Australian Dried Fruits Act under the alleged authority of which the plaintiff's dried fruit had been seized, had in fact expired before some of the seizures complained of were made and accordingly it was held that the High Court had no jurisdiction to entertain James' suit insofar as it related to seizures occurring after the date of expiry: see the comments of Mr. Owen Dixon K.C. (as he then was) in his evidence given before the 1929 Royal Commission on the Constitution at page 784. However it is no less a determination, if the determination is made on demurrer, than it would be if the determination was made at any other stage of the case.

For all these reasons I conclude that the mere pleading in paragraph 8 of the plaintiff's Statement of Claim of a question of repugnance as between the South Australian Constitution Act Amendment Act of 1975 and the Constitution Act 1900 of the Commonwealth of Australia was not of itself sufficient to attract federal jurisdiction. The question never came for determination and accordingly this Court was not exercising federal jurisdiction. For these reasons the amendment was properly allowed so as to show the correct issue between the parties.

That being so, this Court had jurisdiction to grant, as it did, conditional leave to the plaintiff to appeal to Her Majesty in Council against the judgment of the majority of this Full Court.

SOUTH AUSTRALIA
IN THE SUPREME COURT
No. 1499 of 1976

B E T W E E N :

JAMES BARTON GILBERTSON
Plaintiff

- and -

THE STATE OF SOUTH AUSTRALIA
and THE ATTORNEY GENERAL FOR
THE STATE OF SOUTH AUSTRALIA
Defendants

BEFORE THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE ZELLING AND
THE HONOURABLE MR. JUSTICE JACOBS
FRIDAY THE 10th DAY OF DECEMBER, 1976

UPON MOTION made unto this Court this day on behalf of the abovenamed plaintiff for final leave to appeal to Her Majesty in Council from the judgment herein of the Full Court of this Court dated the 3rd day of November 1976 pursuant to Notice of Motion dated the 24th day of November 1976 AND UPON HEARING Mr. Williams Q.C. and Mr. Watson of counsel for the plaintiff and Mr. Prior of counsel for the defendants AND the plaintiff having complied with the conditions imposed on him on the 5th day of November 1976 by order of the Full Court of this Court granting him conditional leave to appeal to Her Majesty in Council THIS COURT DOTH ORDER that the plaintiff be and he is hereby granted final leave to appeal to Her Majesty in Council.

BY THE COURT

L.S. (Signed) J. BOEHM.

MASTER

THIS ORDER was filed by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide, Solicitors for the Plaintiff.

PART II

EXHIBIT "A" (APPELLANTS)

ELECTORAL DISTRICTS BOUNDARIES COMMISSION - ORDER OF COMMISSION (EXTRACT FROM GOVERNMENT GAZETTE OF 5TH AUGUST, 1976.)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 339

Exhibit "A" (Appellants) Electoral Districts Boundaries Commission - Order of Commission (Extract from Government Gazette of 5th August, 1976.)

August 5, 1976]

The South Australian Government Gazette 339

CONSTITUTION ACT, 1934-1975

Electoral Districts Boundaries Commission - Order of Commission

10 The order making an Electoral Redistribution is gazetted pursuant to the provisions of the Constitution Act, 1934-1975, section 86 (1).

Attention is drawn to Paragraph 22 of the report.

Dated this 5th day of August, 1976

By the Commission,

J. GUSCOTT, Secretary

EXHIBIT "B" (APPELLANTS) - ELECTORAL DISTRICTS BOUNDARIES COMMISSION REPORT, 1976. (EXTRACT FROM GOVERNMENT GAZETTE OF 5th AUGUST, 1976.)

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976 (Extract from Government Gazette of 5th August, 1976)

340 The South Australian Government Gazette [August 5, 1976

340 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

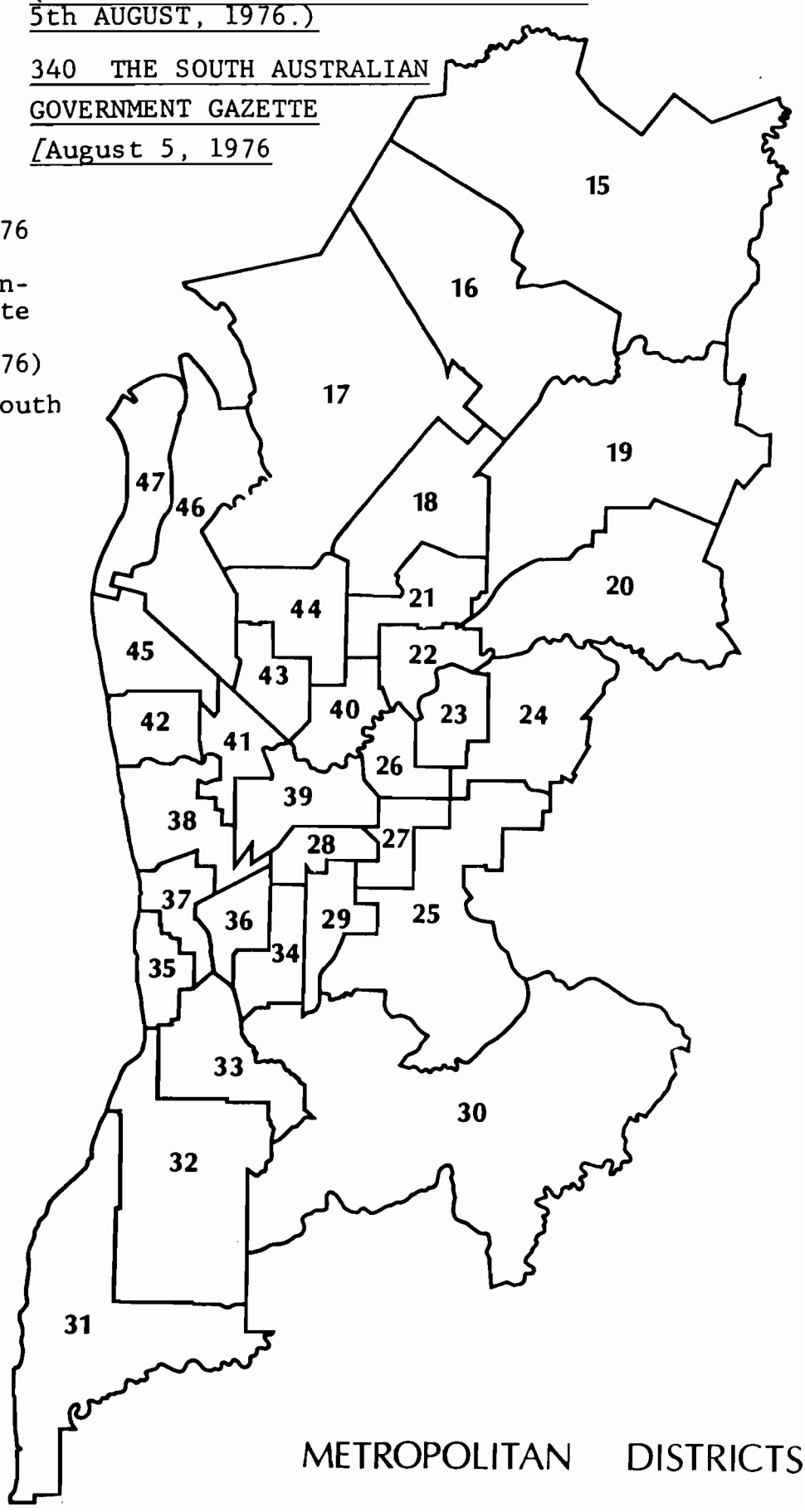

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976

ELECTORAL DISTRICTS BOUNDARIES COMMISSION REPORT, 1976

1. The Electoral Districts Boundaries Commission was constituted by the Constitution Act Amendment Act (No. 5) 1975. It differs from previous commissions for redistribution of electoral boundaries in that each of those commissions was created by the Parliament to make a single report and recommendation to the Parliament. The boundaries so recommended did not become effective unless the recommendation was approved by the Parliament. The present Commission, by contrast, has perpetual succession and a common seal as a corporate entity. The reports made by the present Commission do not require validating legislation: they become operative three months after publication of the Commission's Order. An appeal is provided for in the Act. The appeal is to the Full Court of the Supreme Court of South Australia and is available to any elector. It must be brought within one month. If the appeals are dismissed the Order becomes operative three months thereafter.

2. The Commission is required to commence proceedings for making an electoral redistribution:-

(a) within three months after the commencement of the Constitution Act Amendment Act (No. 5), 1975. The date of commencement was in fact 22nd January, 1976.

(b) as soon as practicable after the enactment of an Act that alters presently or prospectively the number of members of the House of Assembly. The House of Assembly is the lower house of the two houses of Parliament in South Australia. It is the only House

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued)

p. 341

affected by a redistribution. By section 27 of the Constitution Act it consists of 47 members. That is not an entrenched section but is capable of amendment by the Parliament in the ordinary manner.

(c) within three months after a polling day if five years or more has intervened between a previous polling day on which the last electoral redistribution made by the Commission was effective and that polling day.

3. The members of the Commission are-

(a) the Chairman, who is appointed by the Chief Justice and is to be the most senior puisne judge available;

(b) the Electoral Commissioner, if available;

(c) the Surveyor-General, if available.

There are provisions for appointing substitutes if necessary.

4. The Royal Commission Act, 1917, so far as its provisions are applicable, applies to and in relation to the Commission and its members and its proceedings as provided by section 84 of the Constitution Act.

5. All electorates are single member electorates. Voting is compulsory for persons enrolled as electors, and in practice it is unusual for eligible citizens not to be enrolled.

6. The phrase "one vote one value" has been much used in submissions to the Commission. Later in this report we devote some discussion to our obligations in this area. It must not be forgotten, however, that the statutory direction is not so expressed. The direction is that the redistribution shall be made upon the principle that the number of electors comprised in each electoral district must not (as at the relevant date) vary from the electoral quota by more than the permissible tolerance. These terms are explained in the Act:-

"S. 77 (2) In this section-

'electoral quota' means the nearest integral number obtained by dividing the total number of electors for the House of Assembly (as at the relevant date) by the number of electoral districts into which the State is to be divided as at the first polling day for which the order is to be effective:

'permissible tolerance' means a tolerance of 10 per centum:

'the relevant date' means a date specified in an order as the relevant date, being a date falling not earlier than two months before the date of the order."

The"order" referred to is the order of the Commission providing for a redistribution.

7. The Commission is required, before commencing proceedings for making an electoral redistribution, to invite, by advertisement published in a newspaper circulating generally throughout the State, representations from any person in relation to the proposed electoral redistribution. In any such advertisement a date is to be specified as the date before which such representations must be made. In compliance with that requirement and in order to ensure adequate publicity of the advertisement, the Commission inserted the advertisement in a number of newspapers. A copy of the advertisement and a list of the newspapers in which it appears and their dates of publication are contained in Appendix 1. The date specified as the closing date was 19th March, 1976.

8. A person who desires to make representations to the Commission in relation to the proposed electoral redistribution may do so in writing served personally or by post upon the secretary of the Commission before the date specified in the advertisement. In fact thirty-two written submissions were received within due time. A list of the persons making such written submissions is contained in Appendix 2.

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 342

9. The Commission is directed to consider all such representations and may, in its discretion, hear and consider any evidence or argument submitted to it in support of those representations by or on behalf of any person.

10. It is to be noted that the word used in relation to representations is "person", not "elector" or "party". The Commission has in fact considered all the written representations and has heard and considered evidence and argument in Adelaide and at a number of other places. A list of witnesses and places and dates at and upon which evidence or argument was received or at which investigations were made by the Commission for the purpose of this report is contained in Appendix 3.

11. The Commission, being a permanent body, will not go into suspense between redistributions. It will from time to time provide statistical and other information which it considers may be useful to persons concerned with electoral matters. Some material has already been produced or examined by the Commission. A list of the exhibits so produced to the Commission is contained in Appendix 4.

12. The scope and purpose of the inquiries made by the Commission, and the nature of the order made by it, must be conditioned by the directions and permissions imposed upon or granted to it by the Act which creates it. We deal with that matter later. Except pursuant to an order of the Full Court the validity of an order made by the Commission is not to be called in question. The Full Court may, however, pursuant to an appeal by an elector, quash the Commission's order and direct the Commission to make a fresh electoral redistribution, vary the order, or dismiss the appeal.

13. We have not attempted to set out in full the provisions of the Act and for more detailed information reference must be made thereto. A copy of the Constitution Act Amendment Act (No. 5), 1975, is included in the volume containing this report.

14. Except as regards the number of members of the House of Assembly and one or two matters not relevant to a redistribution, the Act is entrenched legislation which cannot be altered significantly

except after a referendum approving the proposed alteration. For the meaning of these expressions we refer to the Act.

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 342 & p. 343

15. We come to the matters referred to in paragraph 12. Obviously the Commission must do its best to make a fair distribution. But what is fair depends upon the terms of the Act. The following are the principal relevant matters:-

15. 1 The number of electors in each seat must be within 10 per cent above or below the State quota. We have provisionally used electoral figures extracted at various dates progressivley as our inquiry proceeded but we have kept in mind the requirement that the date of final figure for quota (the "relevant date") must be a figure which is accurate on a date not earlier than two months before the date of our order. Having regard to delays necessarily incidental to mapping, making technical descriptions, preparing this report and completing the printing thereof that requirement has imposed a considerable strain and we desire to pay a tribute to the excellence of the work done, over very extended hours, by the staffs of the Surveyor-General, the Electoral Commissioner and the Government Printer. Only the fact that in this State all electoral figures are computerised and that the programming includes considerable detail has enabled us to comply with the date requirement, which not only affects the State quota but also the numbers in every proposed district. The relevant date, and the State quota along with other information are mentioned in Appendix 5.

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 343

15. 2 Except where discontinuous or separate boundaries are necessary for the purpose of including an island within an electoral district, the boundaries of an electoral district are to form an unbroken line. This requirement prevents the inclusion of isolated pockets of electors in a single electorate unless the area connecting such pockets is within that electorate. For example, the fishermen residing at Carpenter Rocks and Port Mac Donnell cannot be linked in one electorate with the fishermen residing at Robe and Beachport unless the intervening coastal land is also so included.

15. 3 The Commission shall as far as practicable have regard to a number of other matters, which have come to be called "the criteria". The operative word is "shall", a mandatory word, but its effect is to some extent modified by "as far as practicable". We do not regard the modifying words as giving us a complete discretion. We think that all the criteria must be considered in relation to a proposed electorate and in relation to each other and to the other requirements of the Act. We mention some of these relationships in our discussion of the individual criteria. Before we come to any observations on individual criteria we desire to mention the constraint upon us which is caused by the permitted tolerance of no more than ten per cent above or below quota. The criteria which we are directed to follow can operate only within that constraint and this factor considerably reduces their force. Moreover, since on the average, metropolitan districts on our proposal are numerically a

little larger than country districts, we had a "built-on" additional constraint in the metropolitan area, for it would not have been possible for us to place a large number of metropolitant districts well below the State quota without at the same time putting some or all of the remining districts well above the State quota. In other words, the metropolitan districts as a whole had to be brought into balance at a figure which was higher than the State quota.

16. The criteria are listed alphetically but are not otherwise assigned any relative importance.

They are as follows:-

16. 1 S. 83 (a) "the desirability of making the electoral redistribution in such a manner that there will exist as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);"

in some districts, particularly in the metropolitan area, this criterion does not greatly assist in the determination as to the location of a boundary line: in other districts in the metropolitan area and in most extra-metropolitan districts it is of major importance. The criterion speaks of a community of interest amongst the population of a district. Sometimes there is more than one such interest. For example, in lower Eyre Peninsula there is an interest in growing grain which extends over the whole area. There is another interest in fishing which is limited to coastal fringes. Whether a common pursuit, such as growing grain, or raising sheep or fishing constitutes, per se, a community of interest has been questioned in the hearings. Perhaps it does not necessarily have that character. But

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 344

we prefer to give a broad meaning to the concept and we think that a community of interest generally arises when there is a common pursuit over a single unbroken area. A community of interest undoubtedly arises when there are restrictions and licences applying to the pursuit. Again, a community of interest may be wholly contained within portion of a proposed district which does not otherwise have any great community of interest. Instances can be found in various metropolitan districts. Again, there may be a community of interest which relates to a group of the population which is too great to be contained in a single district. For example, the grain growing area of Eyre Peninsual seems to us to be clearly a group of the population which has a general community of interest. But it contains too many electors for one district and some must be excluded. Those excluded must be placed in a district with which they have less interest. In practical terms, on the view we take, either the Ceduna-Streaky Bay area or the Kimba-Cowell-Cleve area must be excluded from the district of Flinders. We refer to this matter in paragraph 20. We do not attempt a definition of the term "community of interest". The Act uses the phrase "an economic, social, regional or other kind". We do not regard the phrase "or other kind" as capable of being construed as being restricted to a similarity with the preceding adjectives. Common pursuits, common adversity or, perhaps, prosperity, common antipathy (for example that of Ceduna for Port Augusta) common problems, common general level of assumed social status and many other common attitudes, relationships and customs can create a community of interest.

16. 2 S. 83 (b) "the population of each proposed electoral district;"

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 344

it is to be noted that the word is "population" not "electors". We are dealing with electoral concepts and we take the word "population" to mean that we are to have regard not only to those who are now electors but also to those who within a fairly short time may become electors. The latter include at least three categories, namely persons now eligible for enrolment but not at present enrolled, persons under 18 but approaching that age and persons not now eligible but who, by naturalisation or other means, may become eligible. An example of the first category is the adult Aboriginal population. In Yalata alone there are about 300 adult residents, eligible for enrolment but only about 27 enrolled. Our inquiries indicate that in our proposed district of Eyre there may be at least 1 000 Aborigines eligible for enrolment but not enrolled. Many examples of the third category are to be found in the migrant populations, which are not scattered uniformly throughout South Australia but are collected differentially in various areas. We found that Coober Pedy exemplified both the first and the third categories.

16. 3 S. 83 (c) "the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the re-distribution is to be made, the boundaries of existing electoral districts;"

the principles on which the re-distribution is to be made are those laid down in the Act and now under discussion. To apply the phrase in a negative sense, we are not to

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leave a boundary undisturbed, merely because it is there, if the other criteria require it to be moved. The phrase "as far as practicable", repeated in this subsection, indicates a qualified liberty to depart from the requirements of this criterion. And, obviously, the criterion must be departed from in every case where an existing district contained more or less electors than the permitted tolerance from the quota. Indeed, some existing electoral districts must disappear entirely in extra-metropolitan areas and some new districts must be inserted in the metropolitan area. Nevertheless, an existing boundary evidences an opinion held by the 1969 Commission and that Commission worked according to criteria rather similar to those which guide us. Parliament has expressed a view that there is "desirability" in leaving boundaries undisturbed. We do not think that the boundaries of an electorate are left undisturbed if the old electorate is surrounded on all sides by a strip of land whose outer edge constitutes the new boundary. It is true that all the old electors in existence and resident in the old electorate immediately prior to the redistribution would in such a case be included in the new electorate. But this criterion speaks of "boundaries" and a boundary is a notional line on the edge of an electorate. If you enlarge the electorate you necessarily shift that line in at least one direction.

16. 3.1. We refer to the boundaries of the metropolitan area constituted by the Electoral Boundaries Commission of 1969. That Commission was directed by the legislation to define a metropolitan area as a first and necessary step towards a redistribution in which the permitted tolerance in metropolitan districts was less than that in extra-metropolitan districts.

Under the present legislation there is no differentiation in permitted tolerance and therefore there is now no electoral necessity to define a metropolitan area. The metropolitan boundary is consequently no more than a series of electoral district boundaries.

Nevertheless, because of the criterion now under discussion and because it purported to separate metropolitan from extra-metropolitan areas and electors the metropolitan boundary has some claims to survival. It may indicate a possible separation of communities of interest. We have given considerable attention to the question whether to vary that boundary.

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 345

16. 4 As this report can be regarded as a basic document we refer briefly to the former requirements with regard to districts and numbers of electors. Before the 1927 redistribution there were multiple member electorates. The break-up in the House of Assembly was as follows:-

	Members	Electors	Quota per Member
Metropolitan area	15	179 300	11 953
Urban -			
Port Pirie	2	6 554	-
Wallaroo	2	5 783	-
Rural	27	120 021	4 445
Total	46	311 658	6 775

(source-1927 report)

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 345 & p. 346

16. 4.1. The 1927 Commission was directed to preserve the same proportion of representation between Metropolitan, Urban and Rural electorates. Its task was to remove the anomalies which existed in some existing electorates. Therefore, in its report, the 1927 Commission did not disturb the above totals. The report was adopted.

16. 4.2. In 1936 the Constitution Act, 1934 was amended to reduce the number of members of the House of Assembly from 46 to 39 and each electoral district was thereafter to return one member. There were 13 metropolitan seats, two urban seats (Port Pirie and Wallaroo) and 24 rural seats.

16. 4.3. A further Electoral Commission was constituted by the Electoral Districts (Redivision) Act, 1954. The special category of non-metropolitan urban seats was abolished. The Commission was directed to redivide the metropolitan area into 13 approximately equal Assembly districts and to redivide the country areas into 26 approximately equal Assembly districts. The tolerance was 20 per cent for each metropolitan district and also 20 per cent for each country district. At 24th June, 1955, the average number of electors in each metropolitan district was 22 300 and in each country district 6 657. As a result of the redivision the highest and lowest numbers of electors in districts were as follows:-

metropolitan-highest 23 642,
lowest 20 561

country -highest 7 490
lowest 6209

(source-1955 report)

The 1955 proposed redivision was effected by the Constitution Act Amendment Act, 1955.

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Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August, 1976) (continued) p. 346

16. 4.4 A further Electoral Commission was constituted by the Electoral Districts (Redivision)Act, 1962. The Act directed that there be 20 approximately equal Assembly districts in the"rural area" (which was defined) and 20 approximately equal districts in the remaining area of the State. By a proviso, permission was given to the Commission to create one or two additional districts in an area or areas more than 30 miles from the G.P.O. at Adelaide, such district or districts to contain not less than two-thirds as many electors as the average number in the non-rural districts. The tolerance for rural and non-rural districts was 10 per cent. The Commission recommended two districts as envisaged in the proviso. The forty-two proposed districts had the following break up:-

Rural area-20 districts
highest 7 697, lowest 7 013

Non-rural area- 20 districts
highest 18 767, lowest 17 983

Special areas-2 districts
12 586 and 12 823

(source- 1963 report)

The report was adopted.

16. 4.5 A further Electoral Commission was constituted by the Electoral Districts (Redivision) Act, 1968-1969. The Commission was directed to determine a metropolitan area according to criteria laid down. It carried out this direction as a first procedure.

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 346

The Commission was further directed to divide the metropolitan area of the State and the extra-metropolitan area into 47 Assembly districts, in lieu of the then existing 39 districts. The metropolitan quota for a district was to be the State quota plus 15 per cent. This created the result that there were to be 28 metropolitan districts and 19 extra-metropolitan districts. There was a tolerance of 10 per cent for metropolitan districts and 15 per cent for non-metropolitan districts. By reason of the calculation which led to the determination of the number of districts in the metropolitan and non-metropolitan areas respectively the average number of electors in each metropolitan district exceeded the State quota. As a result of the resubdivision the break up of electors was as follows:-

	No. of electors	quota	highest	lowest
Metropolitan	432 055	15 055	16 164	13 654
Extra-metropolitan	183 310	9 647	10 178	8576

(source-1969 report)

The report was adopted and the boundaries remained unaltered until now.

16. 5 S. 83 (d) "the topography of areas within which new electoral boundaries will be drawn;"

"topography" is defined in the Oxford English Dictionary as "A detailed description or delineation of the features of a locality". South Australia is not Switzerland. There are no inaccessible mountains or valleys. In many places the sea is a natural barrier. In a few places, such as the Barossa Valley, encircling hills define, more for historical than

for physical reasons, an area of community of interest. But modern means of transport have no difficulty in surmounting or finding an easy way through most of the physical barriers in South Australia. We have found that transportation patterns pay scant respect to such ranges and that travel for shopping, delivery of grain or wool, business consultations, sport, amusement and so on often passes over, across or through such barriers. Nevertheless a natural feature is sometimes a useful reference point for a boundary line. A major road or a river may be a barrier in fact. Care has to be taken, however, in using a road, a railway line or a river as a boundary line. Sometimes it draws people together on both sides rather than separating communities.

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 346 & p. 347

16. 6 S. 83 (e) "the feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly;"

it is to be noted that this criterion is not, at all events primarily, focused on the convenience of the parliamentary representative. It does not speak of his ability to go around his electorate. "Feasibility of communication between" is a phrase which implies a mutuality. Is it feasible, that is to say is it reasonably possible and convenient, for the electors and the representative to communicate with each other? The word is "communicate" not "interview". A face to face interview if one form of communication and this can sometimes take place within a district electoral office. The criterion does not specifically refer to communication between the

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 347

representative and a single elector who has a problem. It refers to "electors affected by the re-distribution". Of course a good representative will try to see as many of his electors as is conveniently possible, either singly or in groups, and we must have regard to the difficulties involved. Nowadays the motor car will usually afford a ready method of communication. There are, however, other methods of communication than endless travel around the district by motor car. In many country districts planes are available. The trunk telephone service extends throughout the State. The postal service is still a good means of communication. But neither telephone conversation nor a letter is as satisfactory to many electors as a talk face to face. In some districts the representative will probably make use of voluntary helpers, situated in various parts of the district, as channels of communication between electors and himself. The primary purpose for which a representativeis elected is the purpose of representing the electors of his district in Parliament. The more he knows of the needs, wishes and aspirations of his electors the better he will be able to fulfil that purpose. We do not overlook the fact that the more he acts as an agent or adviser to individual electors in relation to individual problems the more likely he is to retain the support of his electors as a whole. But there is, we think, a distinction to be kept in mind. We recognise the fact that in South Australia it is the practice for State representatives to give a great deal of time to the individual problems of electors and that this has come to be expected.

16.	7	S. 83 (f) "the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution;"	Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 347 & p. 348
		broadly speaking, this criterion requires us to have regard to likely increases or decreases in numbers of electors in any part of the State. The likely changes are only material if they appear likely to vary from the rate of change in the State as a whole. Thus, a district with a rapidly increasing electorate should, other things being equal, be placed below quota and there should be corresponding degrees of tolerance in static or declining districts. But we have found that other things are rarely equal and other criteria may impose other solutions. Changing collective interests or age distributions may also be relevant. We have kept this criterion in mind as we have all the other mandatory criteria.	

17. At the end of the list of mandatory criteria the Act states that the Commission "may have regard to any other matters that it thinks relevant". We note at the outset that this is permissive. The word is "may" not "shall". We note also that it is unrestricted in scope. We cannot find in the list of mandatory criteria any generic concept which would indicate a restriction in the definition of "matters". It seems clear, however, that we must not use the permission to go beyond the mandatory criteria in such a way as to bring us into conflict with them. In other words we can use other criteria only if such use is consonant with a proper and full application of and a true reconciliation between the mandatory criteria. It is true that the legislation does not specifically say that any permissive criteria

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 348

are to be subordinated to the mandatory criteria, but to treat them as being capable of over-riding applicable mandatory criteria seems to us to amount to a rejection of the mandate.

18. Two additional permissive criteria have come to our attention. The first is the desirability that, other things being equal, we should draw boundaries in such a way that future redistributions made by the Commission will create as little disturbance as possible in boundaries. That criterion is in aid of the continued application of mandatory criterion S. 83 (c). We have kept it in mind.

19. The second is more major in nature. It assumes that we should make as fair a re-distribution as possible having regard to existing voting patterns. It postulates the possibility of a redistribution which, although the new boundaries might conform to the mandatory criteria, might result in an election in which a party having less than half of the two-party preferred votes might gain more than half the seats. This, it is claimed, would amount to a "gerrymander". It is not argued that we can apply the criterion of political voting patterns as the major criterion, disregarding the mandatory criteria where they conflict with it. The effect of the argument, in its final form, is that the Commission should create a map in conformity with the mandatory criteria and, having done so, should look at the map for a second time in order to see whether, despite such conformity, it appears to be politically skewed. If it appears to be skewed the Commission should try to diminish or eliminate the skewing by making such alterations as are open if the mandatory criteria continue to be applied. We think that a fair redistribution is one which conforms to the directions and purposes of the legislation pursuant to which it is made, and we agree that we must try to make such a redistribution. We have not distorted any boundary in order to achieve a particular voting pattern. In some instances we have added some city voters to a rural electorate. For example, some Whyalla voters have gone into our proposed district of Eyre. It may be that this is tantamount to putting Labor voters in a non-Labor district. We do

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 348

not assert that this is so, but in any event it has been done not in order to affect the voting pattern in Eyre but as being the most suitable solution to the whole electoral pattern. In our view we have in the total proposed re-distribution given, as far as practical, the maximum weight to the mandatory criteria taken as a whole. Any other arrangement of boundaries would, in our view, be less satisfactory because of being less in accordance with those criteria taken as a whole. If a boundary can be drawn in any one of a number of positions when the mandatory criteria are properly applied should we consciously draw the boundary in such a way as to attempt to affect voting patterns? That is the question raised by the submission just mentioned. The voting patterns referred to are the voting patterns of the whole of the electors in the State, for the aim is that the party with the majority of the total votes should gain a majority of the total seats. It follows that a change in boundaries in some areas in order to create some more marginal seats in some districts will not necessarily bring about the consequence that the party with the majority of the total votes cast in the election will have the majority of the seats. We suggest that only if the whole State constituted one district for the House of Assembly, as it does now for the Legislative Council, could this result be assured. And even then there could be argument as to the weight to be given to second and subsequent preferences. Voting patterns will, we think, often reflect communities of interest. We think that we should concentrate on communities of interest and let voting patterns follow as a consequence. We are exceedingly reluctant to engage in speculation as to how electors will vote. We give the following reasons:-

19. 1 The Constitution Act which directs our procedures does not refer to parties. Even in the case of submissions these are made by individuals.

19. 2 We are not satisfied, after a full consideration of the evidence presented to us, that there is any reliable method of forecasting how electors will vote next time.

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 348 & p. 349

19. 3 We do not regard electors as ciphors. We believe that many of them change their votes in successive elections. We have no means of knowing why they do so but we accept the possibility that they are influenced by their opinion of a particular representative or candidate, or by their opinion of a Premier or Leader, or by issues unrelated to the performance of the existing representative or government. In view of the relatively small numbers of electors in each district this volatility in voting can be important and sometimes decisive. Again, how are we to allow for the retirement of a popular representative or for the splitting of his district? We have also to remember that there is always change between elections in actual electors resident in any ballot box area.

19. 4 Political science in its role of predicting voting patterns in future elections seems to us, with respect, to involve an interpretation of incomplete statistical data, a series of assumptions as to uncounted preference votes, and a measure of oneiromancy. We accept the evidence which indicates that it is somewhat inexact science in its forecasting role. We think that it is unwise for us to allow our own imperfect predicting capacity to influence our careful application of the mandatory criteria. But we wish to add that even if it had been proper for us to consider voting patterns as a distinct criterion we should not, on the present proposed redivision, have varied our report.

19. 4. 1 In order to contribute to accuracy in political forecasting one assumption can be tested, namely destination of preferences. We have requested the Electoral Commissioner, at the next election, to make a full count in all seats. The information so obtained will, on the assumption that a second

preference carries the same weight as a first, enable the voting at that election for those candidates to be accurately known. We must make it plain, however, that the information so obtained is merely statistical information forming part of the material which the Commission proposes to issue from time to time. We do not wish to express a view as to whether such information will be relevant to a future redistribution.

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 349

20. We do not propose to discuss each individual proposed electorate, but some findings may be of assistance to future operations of the Commission. We have heard a great body of evidence and submissions and we have travelled widely throughout the State in the quest for information. We mention the following findings:-

20. 1. 1 Kimba, Cleve and Cowell form a natural group and ought to be within the same electorate. They naturally relate to Port Lincoln, and much less to Whyalla.

20. 1. 2 Ceduna has strong links with Port Lincoln and its desire to be in the same district as Port Lincoln is equalled only by its desire not to be in the same district as Port Augusta. Its links with Port Lincoln, taken as a whole, are somewhat less strong than those of the Kimba-Cowell-Cleve area.

20. 1. 3 There ought to be a district containing the grain-growing areas of Eyre Peninsula. This whole area is, topographically as well as by way of community of interest, very distinct from the upper portion of Eyre Peninsula. Unfortunately we could not include the Kimba-Cleve-Cowell end as well as the Ceduna end and we reluctancly excluded Ceduna.

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 349 & p. 350

However we have joined Ceduna not to Port Augusta but to the northern areas of the State.

20. 2 The Aborigines in the far west and in the far north-west are numerous and, in the main, not enrolled. We have put them into the same electorate.

20. 3 We now refer to the south-eastern areas.

20. 3. 1 There is a desire that the whole of the District Council of Tatiara should be in the one electorate. But we have not found much (although there is some) opposition to separating Keith from Bordertown. The choices are to include Bordertown in a southern district and Keith in a northern district or to include both Keith and Bordertown in a northern district. We preferred to put Bordertown in a southern district even at the cost of separating it electorally from Keith.

20. 3. 2 The fishing community in the South East should, as far as possible be in one electorate. However it seems to us inappropriate to link Port MacDonnell and Carpenter Rocks with Beachport and Robe,particularly in view of our final decision as to Beachport and Robe.

20. 3. 3 There are good reasons for linking Beachport and Robe to Millicent. Millicent ought to be in a southern district, however, and the claims of Robe and Beachport are not as strong as those of Bordertown to be in a southern district.

20. 4 We now refer to remote areas of the State.

20. 4. 1 Perhaps our greatest cause for concern relates to the far western, northern and eastern areas of the State. Neither Eyre nor Frome had sufficient electors. They could

have been supplemented by the addition of electors from more southern areas. If the districts came south into farming areas they lost all continuity of electoral pattern and also restricted redistribution possibilities in the south. We considered and rejected a solution which involved joining Eyre to the whole or part of Port Augusta. And that still left Frome to be dealt with.

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 350

20. 4. 2 We thought that the electors in the remote areas had more in common with each other than either Eyre or Frome had with more densely settled areas further south. Even so it was difficult to get sufficient numbers. For the present we have come up the west side of Spencer Gulf and included the surplus from Whyalla. We have linked Port Augusta not with the north but with Port Pirie, drawing off a surplus of electors from the southern outskirts of Port Pirie into adjoining areas. Future boundaries around the upper part of Spencer Gulf will depend on relative growth in the area. We do not overlook the possibility that many Aborigines and a considerable number of migrants already in the northern areas may become enrolled in the proposed remote areas seat before the next redistribution. We went to some trouble to test the practicality of the proposed seat, having in mind all criteria but especially mandatory criterion S. 83 (e). We were assured by a number of members of Parliament, and by others well qualified to judge, that the seat was practical. We noted the three railway lines running north, west and east, the new line from Tarcoola now under

Exhibit "B" (appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 350

construction, the postal communications, the trunk telephone system, existing roads, commercial air services, the availability of charter services and the likelihood of useful liaison with the Royal Flying Doctor Service, the School of the Air, and the St. John Air Ambulance. We surveyed large portions of the area by air. We were warned not to assume that unlimited electoral expenses were available. The question of expenses is one for the Parliamentary Salaries Tribunal, not for us. We refer to section 5b of the Parliamentary Salaries and Allowances Act, 1965-1974. We were assured by an experienced Member that if the existing allowances for Eyre and Frome were pooled that would pretty well do. We express no opinion on this matter but we hope that the representative of such a far flung district will receive sympathetic consideration from the Tribunal.

20. 4. 3 We note that the old Assembly district of Newcastle extended over a similar area to our proposed district and included other areas as well (vide 1927 report).

20. 4. 4 The new district emerges, then, partly for positive reasons and partly because it offers the most desirable (or least undesirable) solution having regard to other solutions arrived at with respect to other districts. No doubt the Commission, in future redistributions, will pay particular attention to the experience gained as to the desirability or otherwise of continuing this electoral district more or less in the form now proposed.

20. 5 We prefer the concept of a coastal strip in the southern metropolitan area. This accords with our own observation of actual growth and will in our opinion allow the greatest flexibility in dealing with future growth.

20. 6 We envisage the likelihood that, despite some semi-rural barriers, the northern metropolitan area will become interfused with adjacent areas. The greatest measure of flexibility will be achieved in future redistributions if the northern metropolitan area and the areas to the north and west of them are considered together.

20. 7 We were troubled over Whyalla. It is a small district, readily manageable by a representative, although probably one containing many electors with personal problems. But the future of Whyalla depends largely on its ship-building industry and at present no-one can confidently and expertly forecast the future of that industry. We have treated the uncertainty as being likely to cause, while it continues, some restriction in the growth of the city.

20. 8 We regret the necessity to divide Port Pirie, but the division is peripheral, not central. Industrial development around the northern Spencer Gulf area will, no doubt, as it occurs create

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Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 351

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the need for electoral changes in the area.

20. 9 The name Brighton is a much less accurate description of District No. 33 than hitherto. We decided to retain it for the time being because it still contains a large part of the former district. However, we think that the name should be considered again when the next redivision takes place.

21. In naming electorates we have given consideration to the avoidance of confusion. Geographical names are rarely accurate as a description of a district. We regard names of former distinguised citizens as being non-specific. Such names are also commemorative. We have avoided the names of living persons. The logical but drab alternative to the use of names seems to us to be the use of numbers. We much prefer to use names, even if some electors neither know nor care about the persons named.

22. Pursuant to Part V of the Constitution Act Amendment Act (No. 5), 1975, we now make and publish an order making an electoral redistribution, namely the re-distribution delineated and described in the technical descriptions, all of which are contained in the Schedule to this Report, and generally described in the sketch plans to this Report and which are more particularly

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delineated on Rack Plan No. 657 and Rack Plan No. 658 which said Rack Plans are deposited in the Department of Lands at Adelaide. By way of further description we have applied names to the respective districts. For the purpose of complying with section 77 (2) of the Act we specify the 30th day of June, 1976, as the relevant date.

Given at Adelaide the 5th day of August, 1976.

For the Electoral Districts Boundaries Commission:

C.H. BRIGHT, Chairman

L.S.

G.H.C. KENNEDY)
) Members
N.B. DOUGLASS)

J. GUSCOTT Secretary

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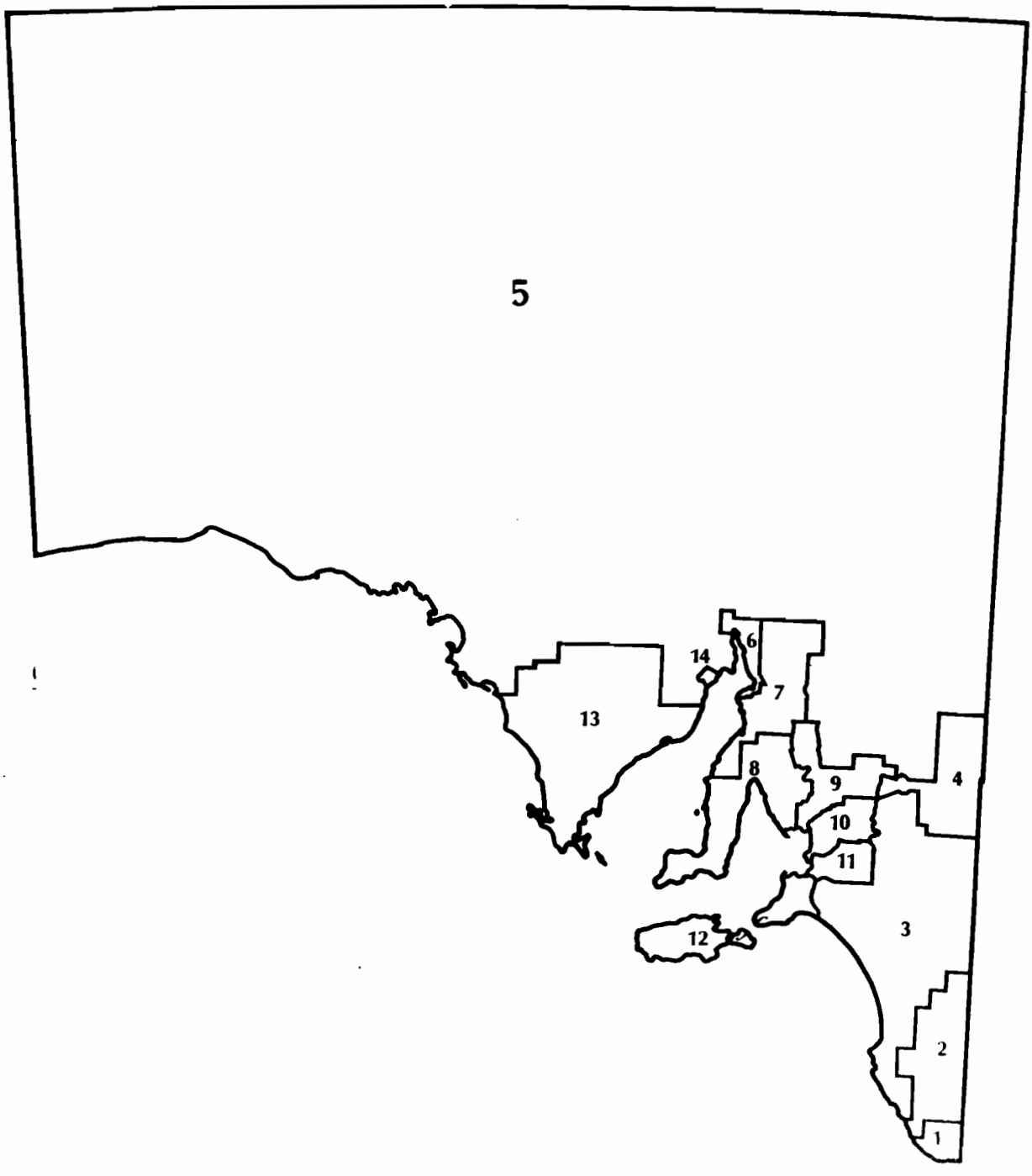

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(continued)

THE SCHEDULE

DETAILS OF DISTRICTS

The old boundaries in the general description mean boundaries existing before the operation of the report.

In the description of each district the reference to number of electors is a reference to the existing subdivisions or parts thereof.

The General Descriptions are not to be taken as being anything more than their name implies. Similarly, the sketches give merely a general indication of the District.

Figures for numbers of electors and percentage variation are based on best information available to us.

We are satisfied that all districts are within the permissible variation from quota but it is possible that there are some minor inaccuracies in the figures shown.

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(Extract from Government Gazette of 5th August, 1976.)

(continued)

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[August 5, 1976

DISTRICT.....MOUNT GAMBIER 1

GENERAL DESCRIPTION:

This District comprises the existing District of Mount Gambier which has been extended to include the southern part of the old District of Millicent as far north as to include the hundreds of Mingbool, Young and Hindmarsh.

MOUNT GAMBIER

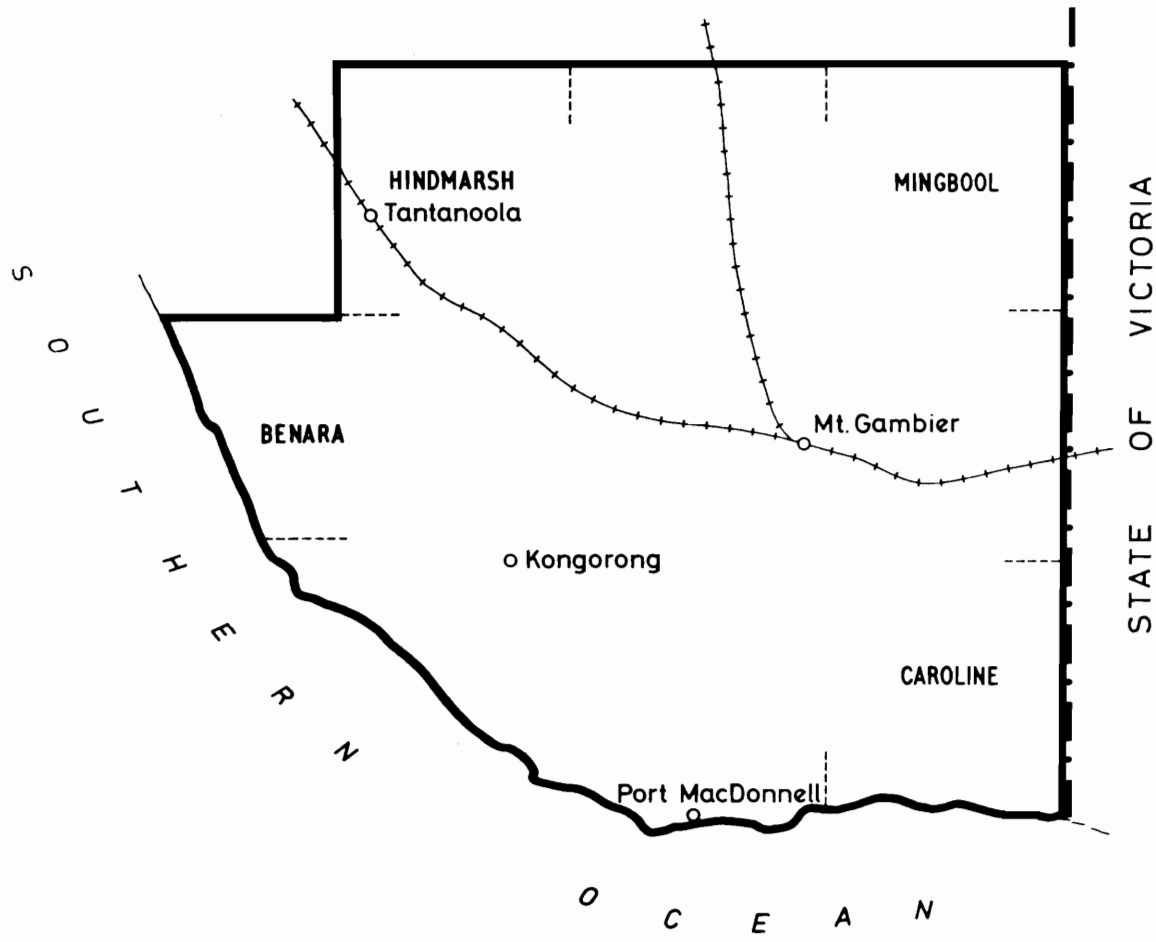

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976 (Extract from Government Gazette of 5th August, 1976.)

(continued)

DISTRICT.....MOUNT GAMBIER 1

NUMBER OF ELECTORS:

MILLICENT (Part).....	3650
MOUNT GAMBIER	12781
	16431

Deviation from Quota:

-2.11 per cent

NOTES AS TO NAME:

Sighted and named Mount Gambier by Lieutenant James Grant, R.N. in H.M.S. Nelson on 3rd December, 1800, after Admiral Lord Gambier, who commanded the Fleet at the Battle of Copenhagen, 1812.

TECHNICAL DESCRIPTION:

Commencing at the north-western corner of the hundred of Benara; thence generally south-easterly and easterly following the sea coast to the east boundary of the State; north along latter boundary; west along the north boundaries of the hundreds of Mingbool, Young and Hindmarsh; south along the west boundary of the hundred of Hindmarsh; thence west along the north boundary of the hundred of Benara to the point of commencement, including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August, 1976.)

(continued)

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DISTRICT.....VICTORIA 2

GENERAL DESCRIPTION:

This District comprises the existing District of Victoria which has been extended in southerly direction to include Millicent and the Hundred of Mayurra. The Keith area has been excised from existing Victoria.

VICTORIA

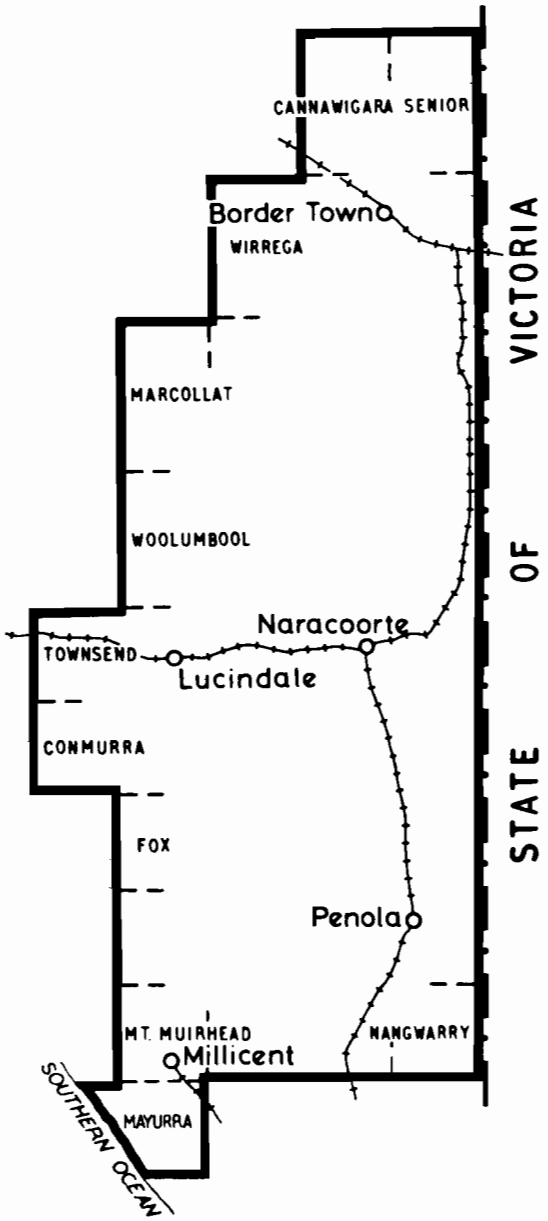

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....VICTORIA

NUMBER OF ELECTORS:

MILLICENT (Part).....	5475
VICTORIA (Part).....	9799
	15274

Deviation from Quota:

-9.00 per cent

NOTES AS TO NAME:

Named after Queen Victoria.

The name Victoria has been commemorated in a House of Assembly District since responsible government was set up in 1857.

TECHNICAL DESCRIPTION:

Commencing at the south-eastern corner of the hundred of Nangwarry; thence north along the east boundary of the State; west along the north boundaries of the hundreds of Senior and Cannawigara; south along the west boundary of latter hundred; west and south along the north and west boundaries of the hundred of Wirrega; west along the north boundary of the hundred of Marcollat; south along the west boundaries of the hundreds of Marcollat and Woolumbool; west along the north boundary of the hundred of Townsend; south along the west boundaries of the hundreds of Townsend and Conmurra; east along the south boundary of latter hundred; south along the west boundaries of the hundreds of Fox, Kennion and Mount Muirhead; west along the north boundary of the hundred of Mayurra; south-easterly following the sea coast to the south-western corner of the hundred of Mayurra; east and north along the south and east boundaries of the hundred of Mayurra; thence east along the south boundaries of the hundreds of Riddoch, Grey and Nangwarry to the point of commencement.

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DISTRICT.....MALLEE 3

GENERAL DESCRIPTION:

This District includes the existing District of Mallee excepting northern part of the county of Alfred and the hundred of Moorook.

It has been extended in a westerly direction to include the Subdivision of Murray South, the Eastern parts of the Subdivisions of Murray North and Heysen South to include Strathalbyn. The coastal strip from Tilley Swamp to Rivoli Bay has been added.

(continued)

MALLEE

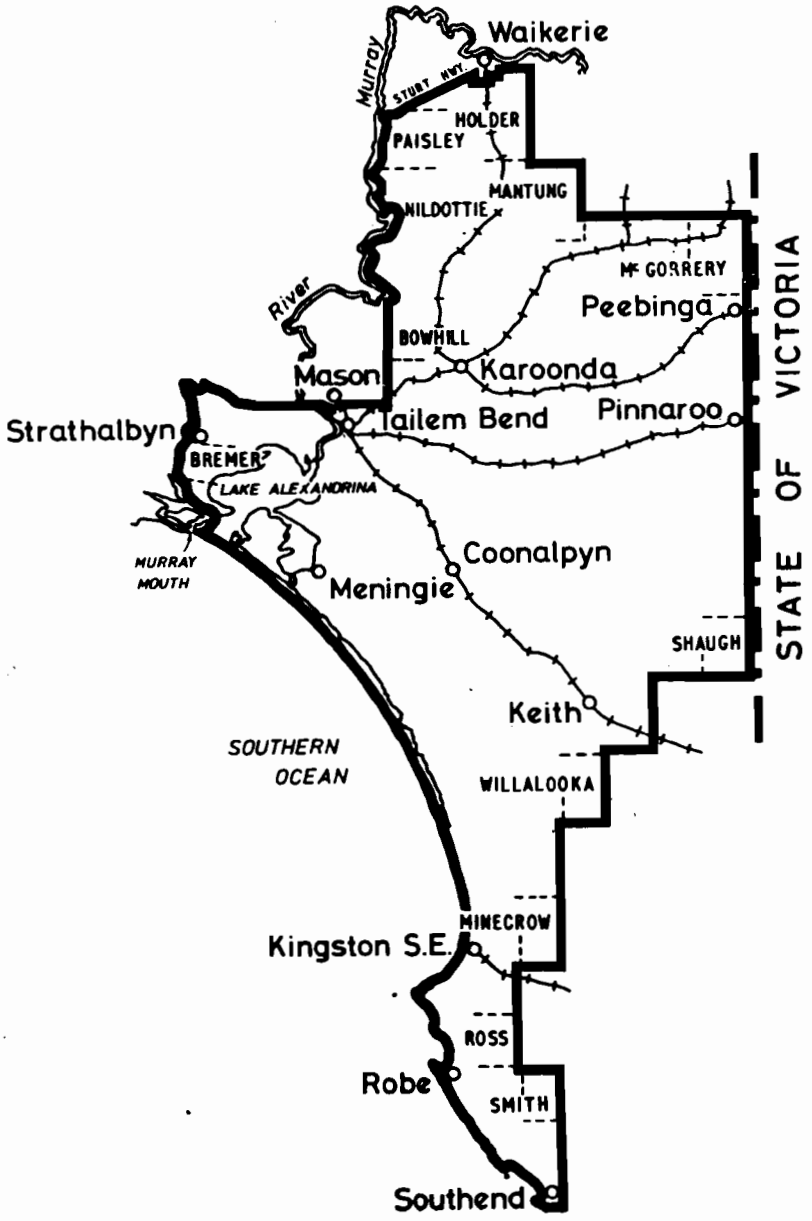

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976 (Extract from Government Gazette of 5th August, 1976).

DISTRICT.....MALLEE 3

NUMBER OF ELECTORS:

HEYSEN SOUTH (Part)	2322
MALLEE NORTH (Part)	3821
MALLEE SOUTH	2967
MILLICENT (Part)	2693
MURRAY NORTH (Part)	232
MURRAY SOUTH	1900
VICTORIA (Part)	1369
	15304

(continued)

Deviation from Quota:

-8.82 per cent

NOTES AS TO NAME:

A name of Aboriginal origin given to a shallow rooted eucalypt and now widely used to describe a large portion of the proposed district.

TEHCNICAL DESCRIPTION:

Commencing at the north-eastern corner of the hundred of McGorrery; thence south along the east boundary of the State; west along the south boundaries of the hundreds of Shaugh and McCallum; south and west along the east and south boundaries of the hundred of Pendleton; south and west along the east and south boundaries of the hundred of Willalooka; south along the east boundaries of the hundreds of Peacock and Minecrow; west along the south boundary of latter hundred; south along the east boundaries of the hundreds of Bowaka and Ross; east along the north boundary of the hundred of Smith; south along the east boundaries of the hundreds of Smith, Symon and Rivoli Bay; west along the south boundary of latter hundred; generally north-westerly following the sea coast to the Murray Mouth; generally north-easterly along north-western boundaries of the hundred of Baker; generally north-westerly along south-western boundaries of the hundred of Alexandrina; east along a north boundary of latter hundred; generally northerly and north-easterly along the western and north-western boundaries of the hundred of Bremer to the south-western boundary of section 2639; north-westerly along the south-

Exhibit"B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August, 1976).

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(continued)

western boundaries of sections 2639, 2617 and 2613, hundred of Kondoparinga; north-easterly along north-western boundaries of sections 2613 and 2611; north-westerly along the south-western boundaries of section 2619, hundreds of Kondoparinga and Macclesfield; north-easterly along the south-eastern boundaries of sections 2628 and 2626, hundred of Macclesfield and section 2625, hundreds of Macclesfield and Strathalbyn; north-westerly along the north-western boundaries of latter section; north-easterly along the north-western boundary of section 35, hundred of Macclesfield; generally northerly along the western boundary of the hundred of Strathalbyn to the road north of sections 2875 and 2874; east along latter road; south-easterly along road through sections 2873 and 2872 and north-east of sections 1402 and 1405; north-easterly along road north-west of sections 1395 and 1376 and through sections 2202 and 2201; south-easterly along the north-eastern boundaries of the hundreds of Strathalbyn and Freeling; east along the north boundary of the hundred of Brinkley to the centre of the River Murray; south-easterly and easterly following said centre of river to its intersection with the production south-westerly of the south-eastern side of road south-east of block 531 and the town of Mason, hundred of Seymour; north-easterly along said production and boundary; generally north-westerly along the north-eastern boundaries of blocks 530, 528, 69 and 525 to the northern boundary of the hundred of Seymour; east along latter hundred boundary; north along the west boundaries of the hundreds of Hooper and Bowhill; generally northerly along the centre of the River Murray to the North-western corner of the hundred of Paisley; east along the north boundary of latter hundred and Sturt Highway; north-easterly following the said Highway to the north-eastern corner of section 369, hundred of Waikerie; south and east along west and south boundaries of Waikerie Division, Waikerie Irrigation Area; north-easterly, east and north along south-eastern, south and east boundaries of Holder Division, Waikerie Irrigation Area to Sturt Highway aforesaid; easterly along latter Highway to the eastern boundary of the hundred of Holder; south along latter boundary; east and south along north and east boundaries of the hundred of Mantung; thence east along the north boundaries of the hundreds of Allen, Kekwick and McGorrery to the point of commencement, together with Penguin Island and Cape Jaffa Lighthouse and including all wharves and jetties along the sea coast.

360 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

DISTRICT.....CHAFFEY

GENERAL DESCRIPTION:

This District comprises the existing District of Chaffey which has been extended across the river to embrace Loxton, county of Alfred and hundred of Moorook.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August, 1976).

(continued)

CHAFFEY

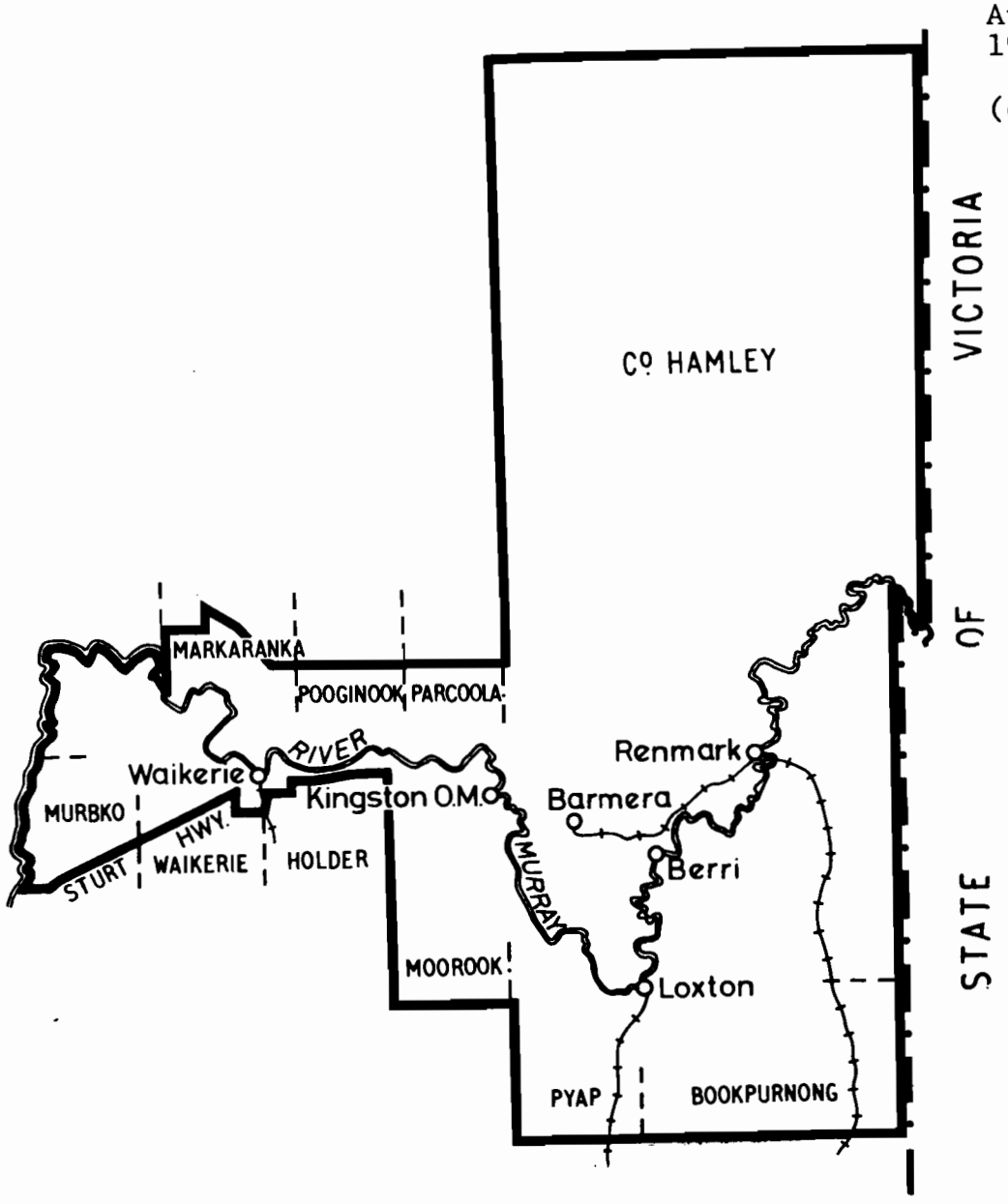

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1967 7 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 361

DISTRICT . . . . . CHAFFEY 4

NUMBER OF ELECTORS:

CHAFFEY.	12 830
MALLEE NORTH (Part). . . .	4 130
	16 960

Deviation from Quota:
+ 1.04 per cent

NOTES AS TO NAME:

After the Chaffey Brothers, who at the instigation of Arthur Deakin, brought the benefit of irrigation on a large scale to the River Murray areas.

TECHNICAL DESCRIPTION

Commencing at the north-east corner of county of Hamley; thence south along the east boundary of the State to the centre of the River Murray; generally north-westerly along said river to the north-eastern corner of the hundred of Murtho; south along the eastern boundary of the State; west along the southern boundaries of Bookpurnong and Pyap; north along the west boundary of latter hundred; west and north along the south and west boundaries of the hundred of Moorook to the Sturt Highway; generally westerly along the said highway to the eastern boundary of Holder Division, Waikerie Irrigation Area; south, west and south-westerly following the boundaries of the said division to the western boundary of the hundred of Holder; west and north along south and west boundaries of Waikerie Division, Waikerie Irrigation Area to Sturt Highway aforesaid; south-westerly and westerly following the said highway and the south boundary of the hundred of Murbko to the centre of the River Murray; generally northerly and easterly following the River Murray to the south-western corner of the hundred of Markaranka; north along the west boundary of the said hundred to the south-western corner of section 26; east along the south boundaries of sections 26 and 79; north along the east boundary of latter section; south-easterly along the north-eastern boundaries of sections 81, 11 and 14; east along the north boundaries of sections 17, 6 and 4; east along the north boundaries of Sections 13, 7, 10, 12 and 23, hundred of Pooginook, and sections 30 and 31, hundred of Parcoola and said boundary produced to the west boundary of county of Hamley; thence north and east along west and north boundaries of the said county to the point of commencement.

DISTRICT . . . . . .EYRE

GENERAL DESCRIPTION

This District includes the existing Subdivision of Frome North, excepting the area west of Burra and south of Robertstown, together with the northern part of the existing District of Eyre to include the portion of the West Coast west of Venus Bay and Minnipa.

The area west of Jenkins Avenue in Whyalla Stuart and the sparsely populated western part of the existing District of Stuart are included.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

EYRE

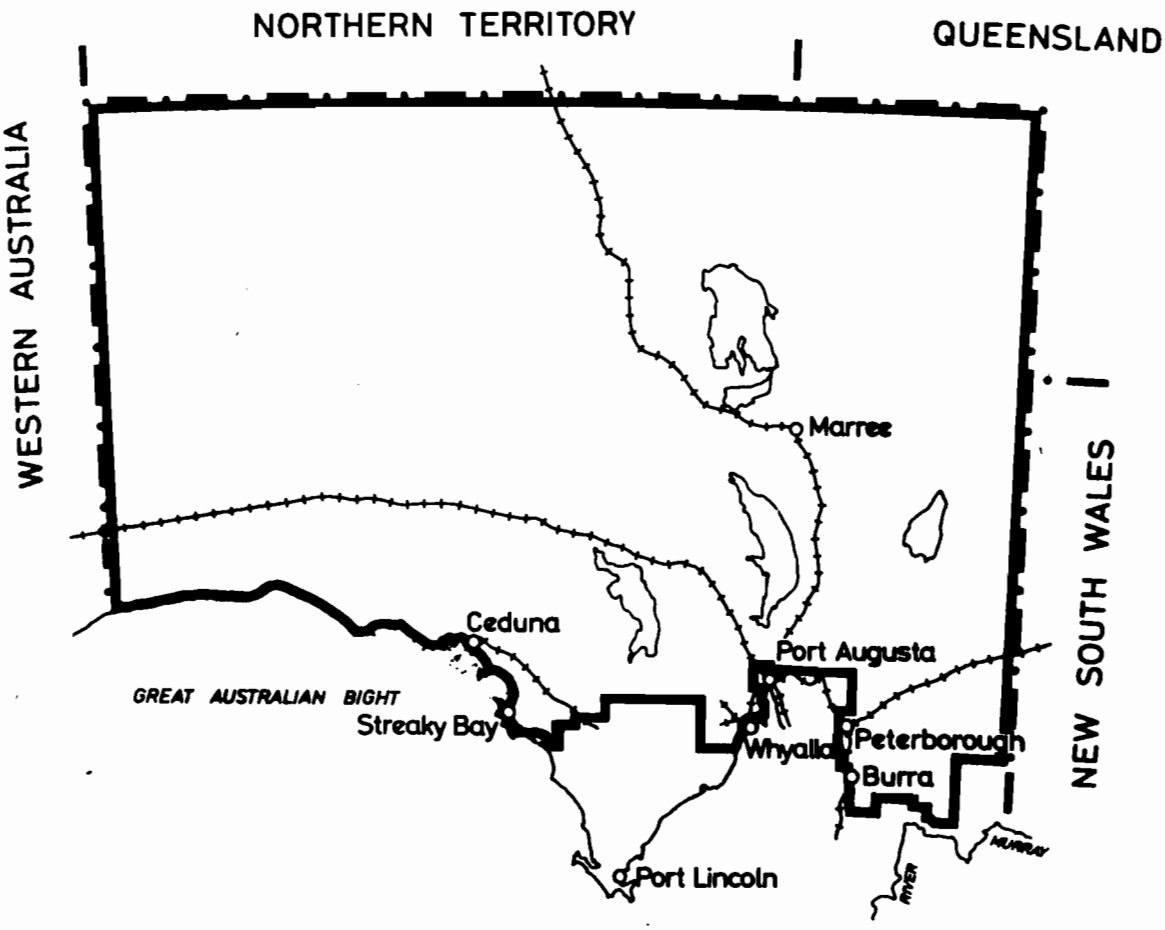

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 363

DISTRICT . . . . . EYRE 5

NUMBER OF ELECTORS:

EYRE (Part)	6 917
FROME NORTH (Part)	6 542
STUART (Part)	1 844
	15 303

Deviation from Quota:
- 8.83 per cent

NOTES AS TO NAME:

Edward John Eyre (1815-1901), first arrived in South Australia overland with stock from Sydney in 1838. Exploration North Spencer's Gulf, East of Murray in 1839. Expedition N.W. Port Lincoln, Streaky Bay to Lake Torrens in 1839. Resident Magistrate, Protector of Aborigines for Murray, 1841. 1840 - accompanied shipment of cattle and sheep by sea to Albany, Western Australia. Drove them overland from there to Perth.

TECHNICAL DESCRIPTION

Commencing at the north-western corner of the State; thence south along the west boundary of the State; generally easterly and south-easterly along the sea coast to the north-western corner of the hundred of Downer; east along the north boundary of latter hundred; north along the west boundaries of the hundreds of Wallis and Travers; east along the north boundary of latter hundred; north along the west boundary of the hundred of Yaninee; east along the south boundaries of the hundreds of Minnipa and Pinbong; north along the east boundary of latter hundred; east along south boundaries of the countries of Bosanquet and Hore-Ruthven; south along a western boundary of latter county; south and east along west and south boundaries of the county of York; generally north-easterly following the sea coast to its intersection with the production south-south-easterly of the western boundary of section 40, hundred of Randell; thence north-north-westerly along said production and boundary to Broadbent Terrace (Lincoln Highway), Town of Whyalla; west-south-westerly along Broadbent Terrace; north along the western boundary of the Town of Whyalla to a north-western corner of allotment 6683; generally north-easterly and south-easterly along north-western and north-eastern boundaries of said allotment; south-easterly along nicolson Avenue; generally north-easterly along Jenkins Avenue; north-westerly along Travers Street; north-easterly along Charles

Avenue; north-westerly along the south-western boundaries of allotment 6750 and section 125 and production to the centre of Iron Knob tramway; south-easterly along tramway to intersect the production north-easterly of the south-eastern boundary of Jamieson Street; north-easterly along a south-eastern boundary of section 19 (a further extension of said side of street); south-easterly along a south-western boundary of said section 19 and the south-western boundaries of sections 241 and 368 to the sea coast; generally easterly and northerly following the sea coast to the south-eastern corner of the hundred of Copley; west, north, east and southerly along south, west, north and east boundaries of latter hundred; east along the south boundaries of the counties of Newcastle and Granville; south along the west boundaries of the hundreds of Minburra and Cavenagh; west along the north boundary of the hundred of Morgan; southerly along the western boundaries of the hundreds of Morgan, Yongala Whyte and Anne; east along the south boundary of latter hundred; southerly along the western boundaries of the hundreds of Kingston, Kooringa and Apoinga; east along the south boundaries of the hundreds of Apoinga, Bright and Bundey; north along the east boundary of latter hundred; east along the north boundaries of the hundreds of Maude and Lindley; south along the east boundary of latter hundred; east and south along the north and east boundaries of the hundred of Stuart to the south-western corner of section 26, hundred of Markaranka; east along the south boundaries of sections 26 and 79; north along the east boundary of latter section; south-easterly along north-eastern boundaries of sections 81, 11 and 14; east along the north boundaries of sections 17, 6 and 4; east along the north boundaries of sections 13, 7, 10, 12 and 23, hundred of Pooginook, and sections 30 and 31, hundred of Parcoola and said boundary produced to the west boundary of county Hamley; thence north and east along west and north boundaries of the said county; north along the east boundary of the State; thence west along the north boundary of the State to the point of commencement, together with St. Peters Island and all other islands adjacent to the District, including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

364 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

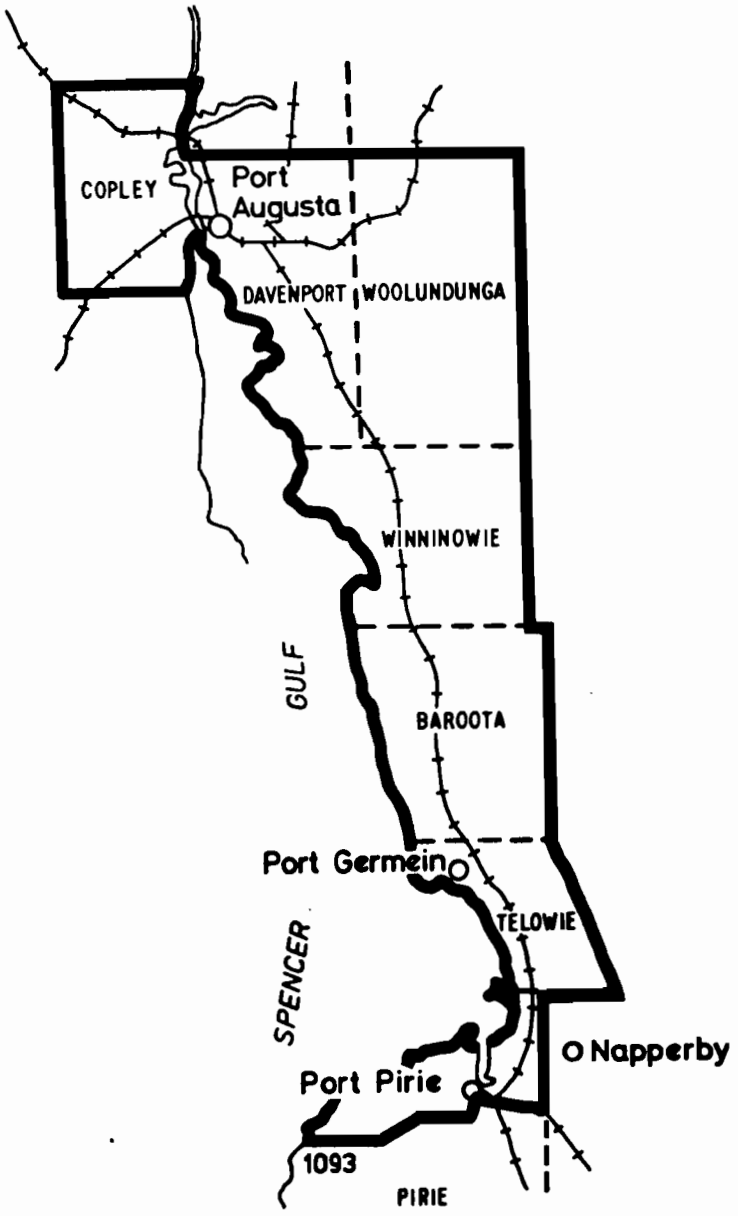
DISTRICT .. .. STUART

GENERAL DESCRIPTION:

This District comprises the old District of Stuart, less the area south of the hundred of Copley. The majority of the existing District of Pirie has been added, excepting the southern part of the City of Port Pirie and the hundreds of Napperby and Howe.

10

STUART



DISTRICT . . . . . STUART 6

NUMBER OF ELECTORS:

PIRIE (Part)	8 562
STUART (Part)	8 138
	16 700

Deviation from Quota:
-0.51 per cent

NOTES AS TO NAME:

Named after John McDouall Stuart (1815-1866) who between 1860 and 1862 penetrated the ring of salt lakes and pioneered a route to the North Coast of Australia. He also explored a route through the North-West of South Australia to the Great Australian Bight.

TECHNICAL DESCRIPTION:

Commencing at the north-eastern corner of the hundred of Woolundunga; thence south along the east boundaries of the hundreds of Woolundunga and Winninowie; east along the north boundary of the hundred of Baroota; south along the east boundary of latter hundred; south-easterly along north-eastern boundaries of the hundred of Telowie; west along the south boundary of latter hundred; south along the east boundary of the hundred of Pirie to the centre line of railway south of section 358S, hundred of Pirie; generally westerly following said railway to its intersection with Three Chain Road, Port Pirie South; south-westerly along said road to Kingston Road; west along Kingston Road; south-westerly and westerly along road south-east of sections 788 and 779 and north of sections 777 and 1093 and production to the sea coast; generally north-easterly, north-westerly and southerly following the sea-coast to the south-eastern corner of the hundred of Copley; west, north, east and southerly along south, west, north and east boundaries of latter hundred; thence east along the north boundaries of the hundreds of Davenport and Woolundunga to the point of commencement, together with Port Pirie Creek and including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

366 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

DISTRICT .. .. ROCKY RIVER 7

GENERAL DESCRIPTION:

This District comprises the existing District of Rocky River, excepting the area south of Spalding. Part of the southern outskirts of Port Pirie, east of Three Chain Road and south of Kingston Road and the southern part of the old District of Pirie and the coastal area down to and including the towns of Kadina, Moonta and Wallaroo have been added.

ROCKY RIVER

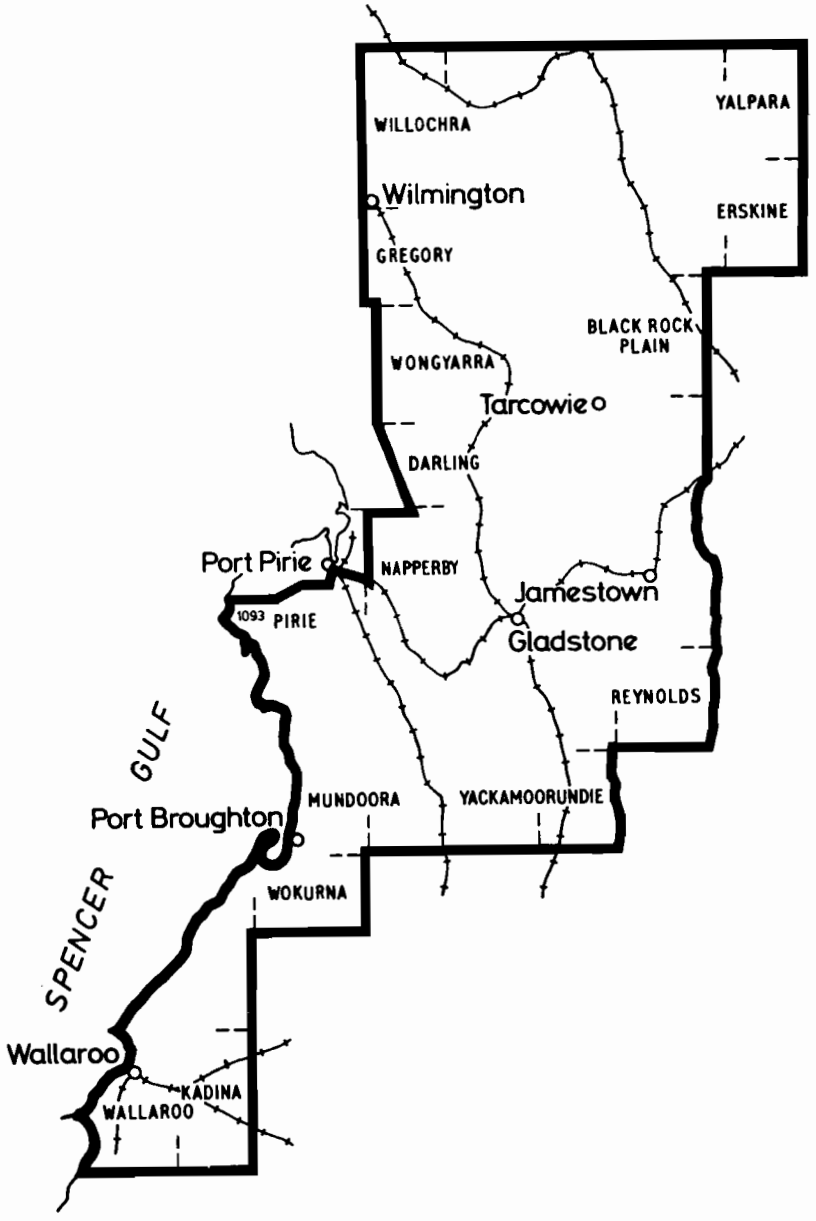


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT . . . . . ROCKY RIVER 7

NUMBER OF ELECTORS:

GOUGER (Part)	5 847
PIRIE (Part)	2 515
ROCKY RIVER (Part).	7 997
	16 359

Deviation from Quota:
-2.54 per cent

NOTES AS TO NAME:

The Rocky River was named by Edward John Eyre in May, 1839.

TECHNICAL DESCRIPTION:

Commencing at the north-western corner of the hundred of Willochra; thence south along the west boundaries of the hundreds of Willochra and Gregory; east along the south boundary of latter hundred; south along the west boundary of the hundred of Wongyarra; south-easterly along south-western boundaries of the hundred of Darling; west and south along the north and west boundaries of the hundred of Napperby to the centre-line of railway south of section 358S, hundred of Pirie; generally westerly following said railway to its intersection with Three Chain Road, Port Pirie South; south-westerly along said road to Kingston Park; west along Kingston Road; south-westerly and westerly along road north-west of sections 787 and 780 and north of sections 777 and 1093 and production to the sea coast; generally southerly and south-westerly following the sea coast to the south-western corner of the hundred of Wallaroo; east along the south boundaries of the hundreds of Wallaroo and Kadina; north along the east boundaries of the hundreds of Kadina and Tickera; east and north along the south and east boundaries of the hundred of Wokurna; east along the south boundaries of the hundreds of Redhill, Koolunga and Yackamoor-undie; northerly along eastern boundaries of latter hundred; east along the south boundary of the hundred of Reynolds; northerly along the eastern boundaries of the hundreds of Reynolds, Belalie, Mannanarie and Black Rock Plain; east along the south boundaries of the hundreds of Walloway and Erskine; north along the east boundaries of the hundreds of Erskine and Yalpara; thence west along the north boundaries of the counties of Dalhousie and Frome to the point of commencement, together with the Lighthouse on Tiparra Reef and including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976)

(Continued)

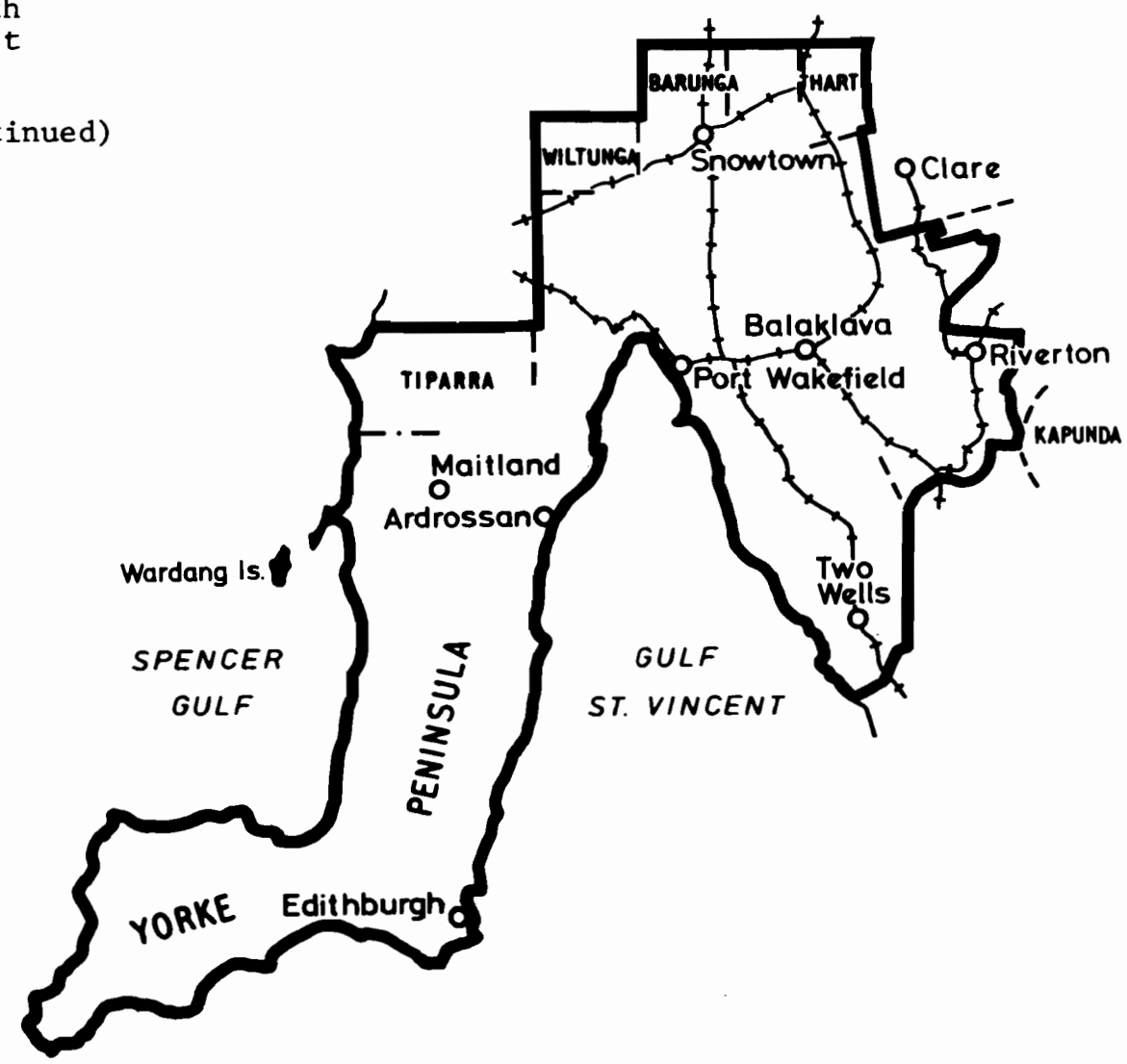
368 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

DISTRICT .. .. GOYDER 8

GENERAL DESCRIPTION:

The District includes the existing Districts of Goyder and Gouger, excepting the Kadina, Wallaroo, Moonta triangle, and the coastal area from Port Hughes to the precincts of Port Broughton.

GOYDER



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 369

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....GOYDER 8

NUMBER OF ELECTORS:

GOUGER (Part)	4902
GOYDER	11109
	16011

Deviation from Quota:

-4.61 per cent

NOTES AS TO NAME:

George Woodruffe Goyder, C.M.G. (1826-1898), was Surveyor-General (1861-1894), established a pattern of Agricultural and Pastoral development in Northern South Australia.

TECHNICAL DESCRIPTION:

Commencing at the north-western corner of the hundred of Tiparra; thence generally southerly westerly, southerly, easterly, north-easterly and south-easterly following the sea coast to its intersection with the production westerly of the southern boundaries of sections E and 181, hundred of Port Adelaide; easterly along said production and boundaries and road south of sections 177, 5046 and 5032; north-easterly in the hundred of Munno Para along road south-east of sections 4260, 3070, 3024 and 3883; easterly along road south of section 3882 and intersecting section 4145; northerly along road east of sections 4145 and 7585; northerly along the eastern boundaries of the hundreds of Port Gawler and Grace to the south-western corner of the hundred of Alma; easterly following the southern boundary of the hundred of Alma to near the north-eastern corner of section 311, hundred of Mudla Wirra; generally northerly, easterly and north-easterly along the centre of River Light to its intersection with the Main Road, near part section 592, hundred of Light; northerly along said road to the southern boundary of the hundred of Gilbert; easterly along said boundary to the western boundary of the hundred of Kapunda; north-north-easterly

Exhibit"B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

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(continued)

along said boundary to its intersection with the north-eastern boundary of section 96, hundreds of Gilbert and Kapunda; north-westerly along said boundary to the south-western corner of section 97, hundred of Gilbert; generally northerly along the western boundaries of sections 97, 334, 393 and 386 and road east of sections 380 and 377; generally north-westerly along road south of and intersecting section 706 and south-west of section 374; easterly along the northern boundary of said section to its intersection with the summit of the Dividing Range; northerly along the summit of said range to its intersection with the northern boundary of the hundred of Gilbert; westerly, northerly and north-easterly along the southern, western and north-western boundaries of the hundred of Saddleworth to the southern corner of section 221, hundred of Stanley; northerly along road west of latter section; westerly along road norther of sections 220 and 308; northerly along road west of section 309; westerly along the northern boundaries of sections 307, 312 and 305, to the eastern boundary of the hundred of Upper Wakefield; westerly along road south of sections 33 and 353 in the latter hundred; northerly along the western boundaries of the latter section and section 192 to the south-western corner of section 191; westerly along the southern boundaries of sections 190 and 587; northerly along the western boundaries of sections 587 and 585, the north-western boundary of section 585, the western boundary of section 584 to the north-western corner of latter section; westerly along the northern boundaries of the hundreds of Upper Wakefield and Hall; generally northerly along the eastern boundaries of the hundreds of Blyth and Hart; west along the north boundaries of the hundreds of Hart, Boucaut and Barunga; south along the west boundary of latter hundred; west along the north boundary of the hundred of Wiltunga; south along the west boundaries of the hundreds of Wiltunga, Ninnes and Kulpara; thence west along the north boundary of the hundred of Tiparra to the point of commencement, together with Althorpe Islands, Wardang Island, Troubridge Lighthouse and including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

DISTRICT.....LIGHT 9

GENERAL DESCRIPTION:

This District comprises the existing Subdivisions of Light North, Frome South; the area south of Robertstown; together with that part of the District of Rocky River south of Spalding and hundreds of Ayers, Hanson and Stanley from Frome North Subdivision.

LIGHT

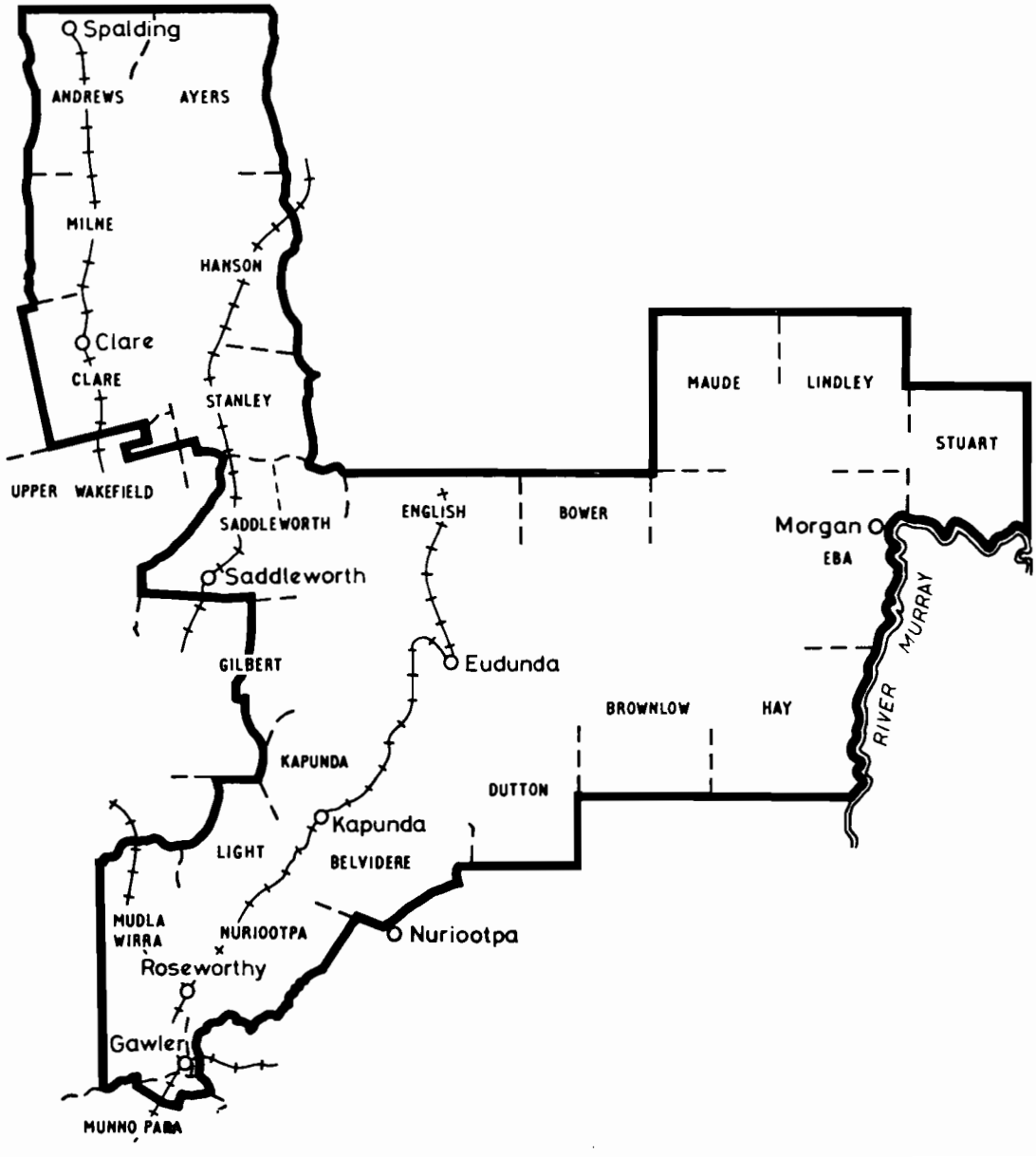

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

August 5, 1976/ THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 371

DISTRICT.....LIGHT 9

NUMBER OF ELECTORS:

FROME NORTH (Part).....	1846
FROME SOUTH.....	395
LIGHT NORTH.....	10551
ROCKY RIVER (Part).....	2595
	15387

Deviation from Quota:

-8.33 per cent

NOTES AS TO NAME:

Colonel William Light (1786-1839), first Surveyor-General of South Australia, laid out the City of Adelaide. He was responsible for surveys in near country districts. Served as Lieutenant in the 4th Light Dragoons under Wellington in Peninsula War.

TECHNICAL DESCRIPTION:

Commencing at the north-western corner of the hundred of Andrews; thence generally southerly following the western boundaries of the hundreds of Andrews, Milne and Clare; easterly along the southern boundary of latter hundred to the north-western corner of section 584, hundred of Upper Wakefield; southerly along the western boundary of latter section, the north-western boundary of section 585 and the western boundaries of sections 585 and 587; easterly along the southern boundaries of sections 587 and 190 to the south-western corner of section 191; southerly along the western boundaries of sections 192 and 353 to the south-western corner of latter section; east along the road south of sections 353 and 33 to the eastern boundary of the hundred of Upper Wakefield; easterly in the hundred of Stanley along the southern boundaries of sections 316 and 310; southerly along the road west of section 309; easterly along road south of sections 309 and 213; southerly along road west of section 221; generally south-westerly and southerly along the north-western

and western boundaries of the hundred of Saddleworth; east along the south boundary of the said hundred to the summit of the Dividing Range; south along said summit to its intersection with the northern boundary of section 374, hundred of Gilbert; west along the north boundary of said section; generally south-easterly along road south-west of section 374 and intersecting and south of section 706; generally southerly along the western boundaries of sections 378, 381, 386, 393, 334 and 97; south-easterly along the south-western boundary of latter section to the western boundary of the hundred of Kapunda; south-south-westerly along the eastern boundary of the hundred of Gilbert and westerly along the south boundary of the said hundred to the Main North Road; generally southerly along said road to the River Light near part section 592, hundred of Light; generally south-westerly and westerly along the centre of said river to the western boundary of the said hundred near the north-eastern corner of section 311, hundred of Mudla Wirra; west and south along the north and west boundaries of the hundred of Mudla Wirra; generally easterly following the Gawler River to the road intersecting section 58, hundred of Munno Para; generally southerly and south-easterly following the road intersecting section 58, west of sections 113 and 3286, and south-west of sections 25, 23 and 1; south-easterly along the south-western boundaries of sections 3199 and 3198 and the road south-west of sections 3197 and 3196; north-easterly along road south-east of sections 3196 and 3211; south-easterly and north-easterly along the road south-west of sections 3334 and 3331 and south-east of sections 3331, 3339 and 1027; generally north-westerly along south-western boundaries of the hundred of Barossa to the south-eastern corner of section 3073, hundred of Barossa; north along the eastern boundaries of sections 3073 and 3076; west along the north boundary of section 3076; north along the west boundary of section 12, hundred of Nuriootpa; generally easterly following the North Para River to the south-eastern corner of section 37; generally north-easterly in the hundred of Nuriootpa along

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued) p.371

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

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(continued)

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the eastern boundary of section 37, the southern and eastern boundaries of sections 804, 1697, 1680 and 626, the south-eastern boundaries of sections 561, 516, part 84 and 289 and the eastern boundaries of sections 283, 79, 160, 1808 and 211; south-easterly, north-easterly and northerly along south-western, south-eastern and eastern boundaries of the hundred of Belvidere to the south-western corner of the hundred of Dutton; east and north along the south and east boundaries of latter hundred; east along the south boundaries of the hundreds of Brownlow and Hay to the centre of the River Murray; generally northerly and easterly following the River Murray to the south-eastern corner of the hundred of Stuart; north and west along the east and north boundaries of latter hundred; north along the east boundary of the Hundred of Lindley; west along the north boundaries of the hundreds of Lindley and Maude; south along the west boundary of latter hundred; west along the north boundaries of the hundreds of Bower, English and Waterloo; generally northerly along eastern boundaries of the hundreds of Stanley, Hanson and Ayers; thence west along the north boundaries of the hundreds of Ayers and Andrews to the point of commencement.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

DISTRICT.....KAVEL 10

GENERAL DESCRIPTION:

This District comprises the whole of the old District of Kavel, the subdivision of Light South and the western part of Heysen North.

NUMBER OF ELECTORS:

HEYSEN NORTH (Part)...	3439
KAVEL.....	11095
LIGHT SOUTH.....	2101
	16635

Deviation from Quota:
-0.89 per cent

NOTES AS TO NAME:

August Ludwig Christian Kavel (1798-1860), was a Lutheran clergyman who, with the aid of money borrowed from G. F. Angas, brought 200 of his German flock to South Australia in 1838 to seek religious freedom. They and succeeding groups of German migrants settled at various centres. Pastor Kavel was their leader. They have made a lasting contribution to the prosperity of South Australia.

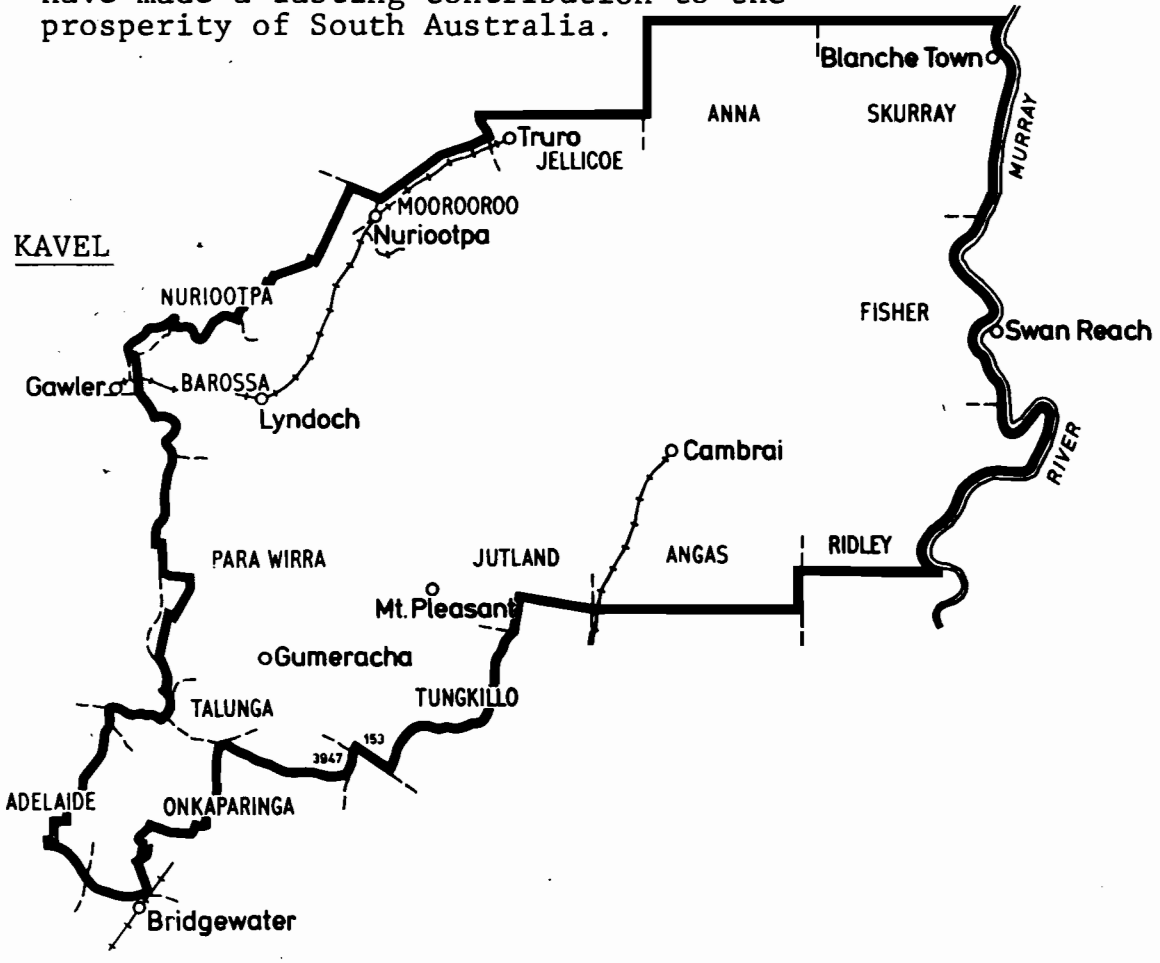

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

August 5, 1976 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 373

TECHNICAL DESCRIPTION:

Commencing at the north-west corner of Anna; thence east along the north boundaries of the hundreds of Anna and Skurray; south along the east boundaries of the hundreds of Skurray, Fisher and Ridley to a point being the production north-easterly of the south-eastern boundary of section 365, hundred of Ridley; south-westerly along latter production and boundary and road south-east of section 55; west along road south of sections 55, 165, 457, 160 and 158, to the east boundary of the hundred of Angas; south to its south-east corner; west along the north boundaries of the hundreds of Finnis and Tungkillo and south along portion of a western boundary of the latter hundred to the north-east corner of section 262; westerly along northern boundaries of sections 262 and 261 to the road through the latter section; southerly along road through sections 261, 260, 258, 256, 179 and part 182, along the north-western and western boundaries of sections 477 and 478, along the western boundaries of sections 479, 480, 482, 483 and portion of section 484, westerly along road along the northern boundaries of sections 244, 236, 235, 124 and 122 to the north-eastern corner of section 121; south along road east of latter section and sections 128, 140 and 153 to the south-western boundary of the hundred; north-westerly along latter boundary; generally southerly along the north-western boundary of the hundred of Kanmantoo to the south-eastern corner of section 3947, hundred of Onkaparinga; west along road south of latter section, south-west and west along road south-east and south of sections 3950, 3958, 370, 165 and 163; north-west along road south-west of latter section and section 4240; north-west along main road through sections 5048 and 5055; generally north-westerly along north-eastern boundaries of sections 5055, 5056, 5118 and 5184; north-east along the south-eastern boundary of part section 50 to the Adelaide and Birdwood main road; generally westerly along said main road to the north corner of section 29; generally south-westerly along roads east of sections 29 and 23, south-east and south-west of section 26, south-east of section 20, east of section 4074, east and south of section

4058, south-east of sections 97 and 98, and intersecting section 98 to the north-eastern corner of section 4000; generally north-westerly along the south boundary of section 98 and the south-western boundaries of section 99, generally south-westerly along road south-east of and intersecting section 133 and south-east of section 129; generally south-easterly along road intersecting sections 32, 33 and 34; south along the east boundaries of sections 34 and 119; south-westerly along road north-west of section 115; south-east along the north-east boundaries of sections 116 and 112; south-west along the south-eastern boundaries of sections 109 and 439 and production to the South Eastern Freeway; generally westerly along the South Eastern Freeway to its intersection with the northern boundary of the hundred of Noarlunga; westerly along latter boundary to the eastern boundary of the hundred of Adelaide; westerly along the South Eastern Freeway; generally northerly along road west of section 986 and road closed 15th May, 1975 to the South Eastern Freeway; generally north-westerly along said freeway and Princes Highway; westerly and northerly along the southern and western boundaries of section 1286 to the southern corner of section 1284; north-easterly and north-westerly along the south-eastern and north-eastern boundaries of section 1284; northerly and easterly following the boundaries of part section 1001 and easterly and southerly following the boundaries of former part section 1001; easterly along the southern boundaries of former sections 1053 and 1054; northerly along the eastern boundaries of former section 1054 and sections 1056 and 1057; easterly along the southern boundaries of sections 906 and 917 and former section 919; northerly and easterly along western and northern boundaries of former section 1180 to the south-western corner of section 1107; northerly along the western boundaries of sections 1107 and 484; easterly and northerly along the southern and eastern boundaries of section 1104; south-easterly, north-easterly and north-westerly following the boundaries of section 855; north-easterly along the north-western boundaries of former section 991; north along the west boundary of section 827; westerly and north-easterly along the southern and north-western boundaries of section 997; generally northerly along the eastern boundary of the

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued) p.373

Exhibit"B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

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hundred of Adelaide to the River Torrens; generally easterly along the centre of the River Torrens to the eastern boundary of the hundred of Yatala; generally northerly along the said eastern boundary to the western boundary of section 5483, hundred of Yatala and Para Wirra; north-north-easterly along the western boundaries of sections 5483, 5551, 988, 5530 and 441, hundred of Para Wirra and production to centre of road north-east of section 441; south-easterly along centre of said road to its intersection with the production south-westerly of the north-western boundary of section 371; north-easterly along said production and boundary and the northern boundary of sections 371 and 370; north along the east boundaries of sections 254 and 351; westerly along the southern boundaries of sections 418 and 251W; northerly by a straight line to a point 10-06 metres west of the intersection of the southern boundary of section 5610, hundreds of Yatala and Para Wirra and the hundred boundary; northerly, westerly and northerly through sections 5610, 5611, 5612, 5613 and 5614, hundreds of Para Wirra and Yatala and section 5616, hundreds of Yatala, Para Wirra and Munno Para by straight lines parallel to and distant 10.06 metres from the eastern boundary of the hundred of Yatala and situate westerly, southerly and again westerly from the said hundred boundary to the south-eastern corner of the hundred of Munno Para; northerly along the eastern boundary of the said hundred; northerly along the eastern boundaries of sections 3 and 5, hundred of Nuriootpa, and sections 3073 and 3076, hundred of Barossa; west along the north boundary of section 3076; north along the west boundary of section 12, hundred of Nuriootpa; generally easterly following the North Para River to the south-eastern corner of section 37; generally north-easterly in the hundred of Nuriootpa along the eastern boundary of section 37, the southern and eastern boundaries of sections 804, 1697, 1680 and 626, the south-eastern boundaries of sections 561, 516, part 84 and 289 and the eastern boundaries of sections 283, 79, 160, 1808 and 211; south-easterly, north-easterly and northerly along south-western, south-eastern and eastern boundaries of the hundred of Belvidere to the south-western corner of the hundred of Dutton; east along the south boundary of latter hundred; thence north along the west boundary of the hundred of Anna to the point of commencement.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report, 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

DISTRICT.....MURRAY 11

GENERAL DESCRIPTION:

The District includes the Town of Murray Bridge and consists of the old Subdivision of Murray North, less the hundreds of Forster and Bowhill. The eastern part of the Subdivision of Heysen North has been added.

10 NUMBER OF ELECTORS:

HEYSEN NORTH (Part).....	5474
MURRAY NORTH (Part).....	10454
	15928

Deviation from Quota:

-5.11 per cent

NOTES AS TO NAME:

The river was named by Sturt, in 1830, after Sir George Murray, who then presided over the Colonial Office.

MURRAY

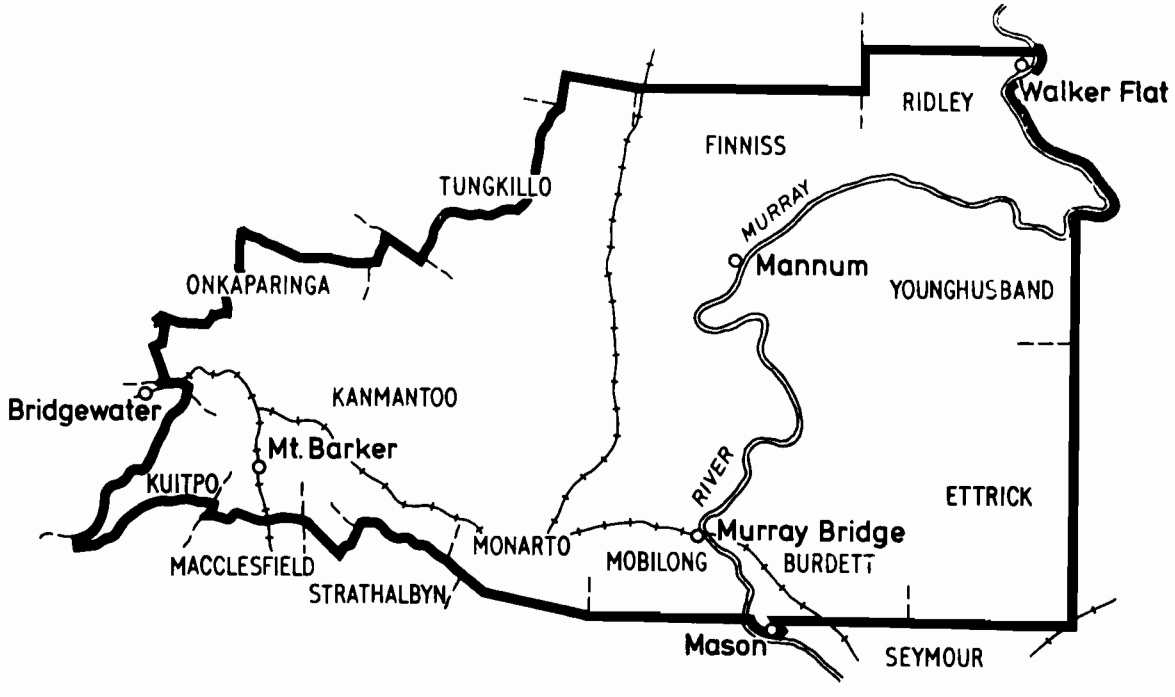

Exhibit "B" (Appellants) Electoral Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 375

DISTRICT .. .. MURRAY 11

TECHNICAL DESCRIPTION:

Commencing at the north-eastern corner of the hundred of Younghusband; thence south along the east boundaries of the hundreds of Younghusband and Ettrick; west along the south boundaries of the hundreds of Ettrick and Burdett to the north-eastern boundary of block 525, hundreds of Burdett and Seymour; south-easterly along portion of the north-eastern boundary of said block and the north-eastern boundaries of blocks 69, 528 and 530, hundred of Seymour and production to the south-eastern side of road south-east of block 531 and the town of Mason; south-westerly along said side of road and production to the centre of the River Murray; westerly and north-westerly following said centre of river to the south-eastern corner of the hundred of Mobilong; westerly along the southern boundaries of the hundreds of Mobilong, Monarto and Kanmantoo to the road intersecting section 2201, hundred of Strathalbyn; south-westerly along said road through sections 2201 and 2202 and south-east of sections 1378 and 1396; north-westerly along road south-west of sections 1396 and 1401 and through sections 2872 and 2873; westerly along road south of sections 2878 and 2877, and sections 2876 and 2880, hundred of Macclesfield; north-westerly along the south-western boundary of section 2884; westerly along road south of sections 2212, 3008, 3006, 3718, 4 and 8; north-easterly along the eastern boundary of the hundred of Kuitpo; westerly along road north of section 181 of latter hundred; north-westerly along the north-eastern boundary of part section 3883; south-westerly along road north-west of part section 3883; westerly along road south of sections 709 and 3888; south westerly between sections 174 and 156; westerly along road north of sections 370 and 372; south-westerly along road north-west of sections 372, 357 and 828; westerly and southerly along road north and west of part section 332; generally south-westerly along the north-western boundaries of sections 331, 817 and 321; generally northerly and westerly along road through section 22 to the north-eastern corner of section 4164; north to a point being the intersection of a straight line drawn from the latter corner to the southern

corner of section 223, hundred of Noarlunga and the southern boundary of the said hundred; generally easterly and north-easterly along the latter boundary to the south-western corner of section 3825, hundreds of Noarlunga and Kuitpo; north and south-east along west and north-east boundaries of said section; generally north-easterly along the south-eastern boundary of the hundred of Noarlunga to the south-western corner of section 3849, hundred of Noarlunga; northerly, north-easterly and easterly along western, north-western and northern boundaries of the said section and easterly along the northern boundary of section 3860, hundreds of Noarlunga and Kuitpo to the western boundary of section 3818 in the said hundreds; north along the west boundary of the latter section to the northern boundary of the hundred of Noarlunga; north-westerly along latter boundary to its intersection with the production south-westerly of the south-eastern boundaries of sections 439 and 109, hundred of Onkaparinga; north-easterly along latter production and boundaries; north-westerly along the south-western boundaries of sections 114 and 115; north-easterly along road north-west of latter section; northerly along the eastern boundaries of sections 119 and 34; generally north-westerly and north-easterly following the road through sections 34, 33 and 32, south-east of section 129 and intersecting and south-east of section 133 to the northern corner of section 103; generally easterly along the south-western boundaries of section 99, the southern boundary of section 98 and road intersecting latter section; generally north-easterly along road south-east of section 97, south and east of section 4058, east of section 4074, south-west and south-east of section 26, and east of sections 23 and 29; generally easterly along the Adelaide to Birdwood main road to the north-eastern corner of section 50; south-westerly along the south-eastern boundary of latter section to the northern corner of section 5184; generally south-easterly along the north-eastern boundaries of sections 5184, 5118, 5056 and 5055, the road intersecting said section 5055 and sections 5048 and 4241, and the road north-east of sections 4241 and 3966; generally easterly along road

Exhibit "B" (Appellants) Electoral Districts Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August, 1976)

(Continued)

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Exhibit "B" (Appellants) Electoral Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

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north-west of section 413, north of sections 3964, 3959, 3961, and north-west and north of section 3948; generally northerly along the western boundary of the hundred of Kanmantoo to its northern corner; south-easterly along the north-eastern boundary of the said hundred; generally northerly in the hundred of Tungkillo along the road west of sections 156, 141 and 122; generally easterly along the road north and east of section 122, and north of section 123, 126, 235 and 244 ; generally north-easterly along road north-west of sections 484 and 483, west of sections 482, 479 and 477, and through sections 182, 179, 256, 258, 260 and 261; east along northern boundaries of sections 261 and 262; north along a west boundary of the hundred of Tungkillo; east along the north boundaries of the hundreds of Tungkillo and Finnis; north along the west boundary of the hundred of Ridley; east along the road north of sections 156, 149, 142 and 53; north-easterly along road north and north-west of section 54 and north-west of section 415; north-easterly along the south-eastern boundary of section 365 and production to the centre of the River Murray; thence generally south-easterly along the centre of the River Murray to the point of commencement.

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DISTRICT .. .. ALEXANDRA 12

GENERAL DESCRIPTION:

This District comprises the existing District of Alexandra which has been extended eastwards to the precincts of Strathalbyn.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976

(Continued)

ALEXANDRA

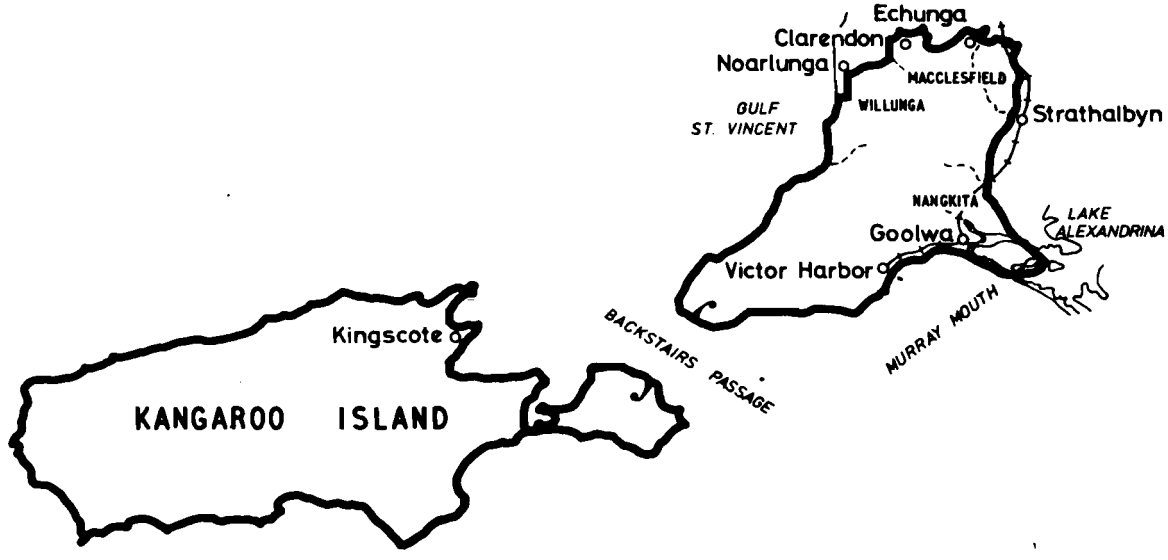

Exhibit "B" (Appellants)

Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

August 5, 1976 7 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 377

DISTRICT . . . . . ALEXANDRA 12

NUMBER OF ELECTORS:

ALEXANDRA.	13 768
HEYSEN SOUTH (Part)	2 182
	15 950

Deviation from Quota:
- 4.97 per cent

NOTES AS TO NAME:
Named after Princess Alexandra, Later Queen Consort of Edward VII.

TECHNICAL DESCRIPTION:

(a) Comprising the whole of Kangaroo Island, together with jetties along the sea coast.

(Continued)

(b) Commencing at a point on the sea coast being the production westerly of the southern boundary of section 594 (Recreation Reserve), hundred of Willunga; thence generally south-westerly, easterly, north-easterly and south-easterly following the sea coast to the Murray Mouth; generally north-easterly along north-western boundaries of the hundred of Baker; generally north-westerly along south western boundaries of the hundred of Alexandrina; east along a north boundary of latter hundred; generally northerly and north-easterly along the western and north-western boundaries of the hundred of Bremer to the south-western boundary of section 2639; north-westerly along the south-western boundaries of sections 2639, 2617 and 2613, hundred of Kondoparinga; north-easterly along north-western boundaries of sections 2613 and 2611; north-westerly along the south western boundaries of section 2619, hundreds of Kondoparinga and Macclesfield; north-easterly along the south-eastern boundaries of sections 2628 and 2626, hundred of Macclesfield and section 2625, hundreds of Macclesfield and Strathalbyn; north-westerly along the north-western boundaries of latter section; north-easterly along the north-western boundary of section 35, hundred of Macclesfield; generally northerly along the eastern boundary of latter hundred to the road south of section 2876; Westerly along road south of sections 2876 and 2880, hundred of Macclesfield; north-westerly along the south-western boundary of section 2884; westerly along road south of sections 2212, 3008, 3006, 3718, 4 and 8;

north-easterly along the eastern boundary of the hundred of Kuitpo; westerly along road north of section 181 of latter hundred; north-westerly along the north-eastern boundary of part section 3883; south-westerly along road north-west of part section 3883; westerly along road south of sections 709 and 3888; south-westerly between sections 174 and 156; westerly along road north of sections 370 and 372; south-westerly along road north-west of sections 372, 357 and 828; westerly and southerly along road north and west of part section 332; generally south-westerly along the north-western boundaries of sections 331, 817 and 321; generally northerly and westerly along road through section 22 to the north-eastern corner of section 4164; northerly by a straight line to the southern corner of section 223, hundred of Noarlunga; generally northerly, north-westerly and northerly along road west of latter section, east and north of section 107, east of section 1426, along road opened 4th November, 1897, to the western road intersecting section 288; generally south-westerly and north-westerly following the road south of section 288, east of sections 58 and 300, south of sections 302, 308 and 319, intersecting sections 772 and 771 and the northern portion of section 770; along the main road to the north-eastern corner of section 272 (Chandler Hill); southerly and south-westerly along the road east of section 272, east and south of section 1487, intersecting sections 672, 678, 684, 694, 693, 701 and 700 (Bains Road); south along the road west of latter section and sections 732 and 818; easterly along the road south of sections 818 and 819 to the southern boundary of section 820; generally south-westerly following the River Onkaparinga around the Town of Noarlunga to the road intersecting section 69, hundred of Willunga; northerly along latter road; westerly along road north of section 69 to the Main South Road; south-westerly along said main road; generally southerly along the Noarlunga and Victor Harbor Main Road to Robinson Road; westerly along

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)
(Continued)

Robinson Road; southerly along Main South Road to the south-eastern corner of section 361, hundred of Willungs; westerly along the southern boundaries of latter section and section 360; southerly along the western boundary of section 363; westerly along the southern boundaries of sections 359 and 594 and production to the point of commencement, together with adjacent islands and jetties along the sea coast.

10

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. FLINDERS 13

GENERAL DESCRIPTION

This District includes the existing District of Flinders, together with the southern part of the existing District of Eyre to include the counties of Buxton, Musgrave, Jervois and Le Hunte, excepting the Minnipa area and the hundred of Pinbong. The township of Talia has been included in the District, together with hundreds of Travers and Wallis.

FLINDERS

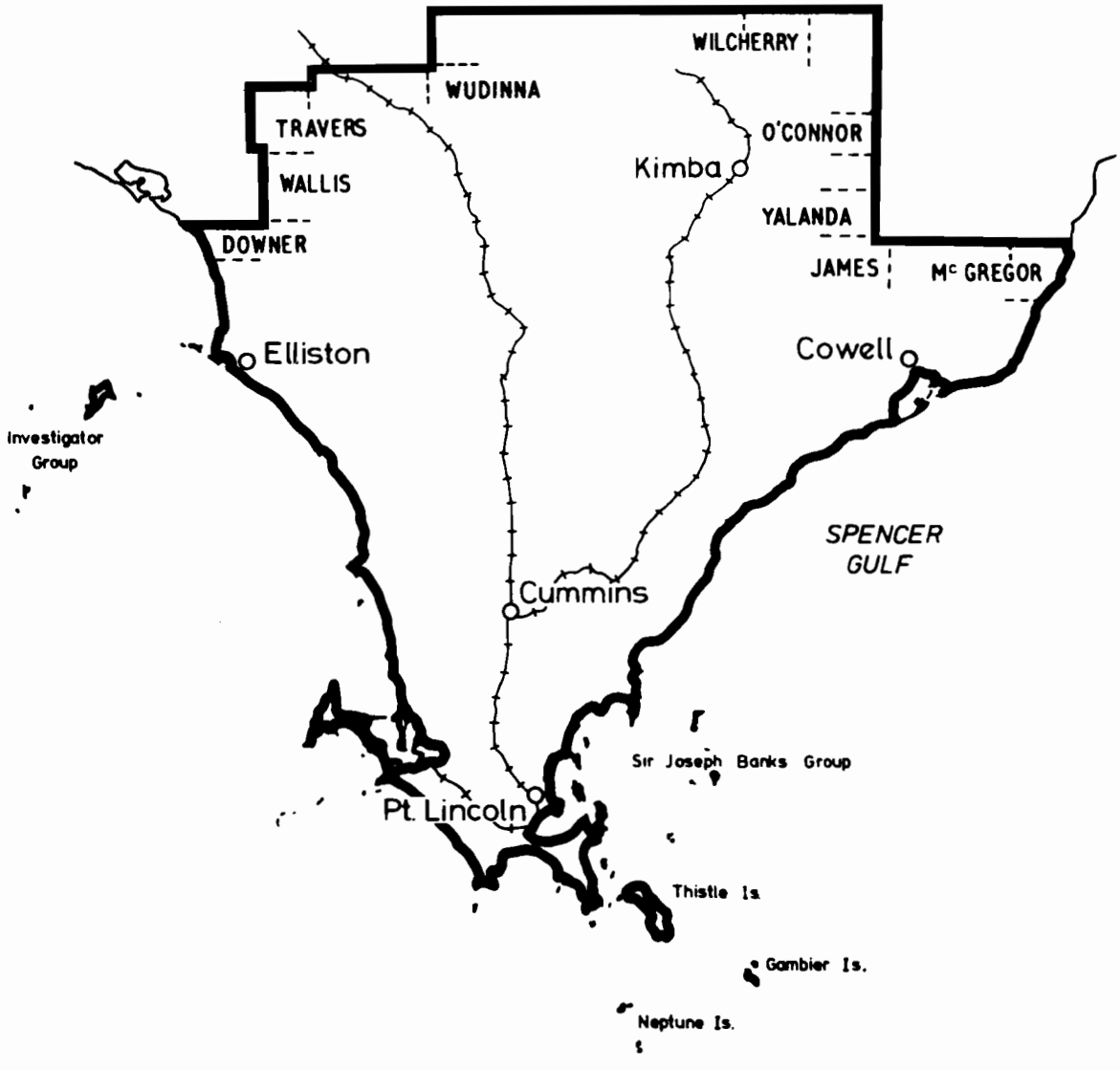

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 379

DISTRICT . . . . . FLINDERS 13

NUMBER OF ELECTORS:

EYRE (Part)	3 238
FLINDERS	12 107
	15 345

Deviation from Quota:
- 8.58 per cent

NOTES AS TO NAME:

Captain Matthew Flinders, R.N. (1774-1814), in the INVESTIGATOR, mapped the southern and eastern coastline of Eyre Peninsula. Early in 1802 he investigated and named Spencer Gulf.

TECHNICAL DESCRIPTION:

Commencing at the north-western corner of the hundred of Downer; thence east along the north boundary of latter hundred; north along the west boundaries of the hundreds of Wallis and Travers; east along the north boundary of latter hundred; north along the west boundary of the hundred of Yaninee; east along the south boundaries of the hundreds of Minnipa and Pinbong; north along the east boundary of latter hundred; east along south boundaries of the counties of Bosanquet and Hore-Ruthven; south along a western boundary of latter county; south and east along west and south boundaries of the county of York; thence generally south-westerly and north-westerly following the sea coast to the point of commencement, together with Thistle Island, Gambier Island, Neptune Islands, Sir Joseph Banks Group, Flinders Island and all other islands adjacent to the District and including all wharves and jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. WHYALLA 14

GENERAL DESCRIPTION:

The District includes the existing District of Whyalla which has been extended westwards into Whyalla Stuart as far as Jenkins Avenue.

WHYALLA

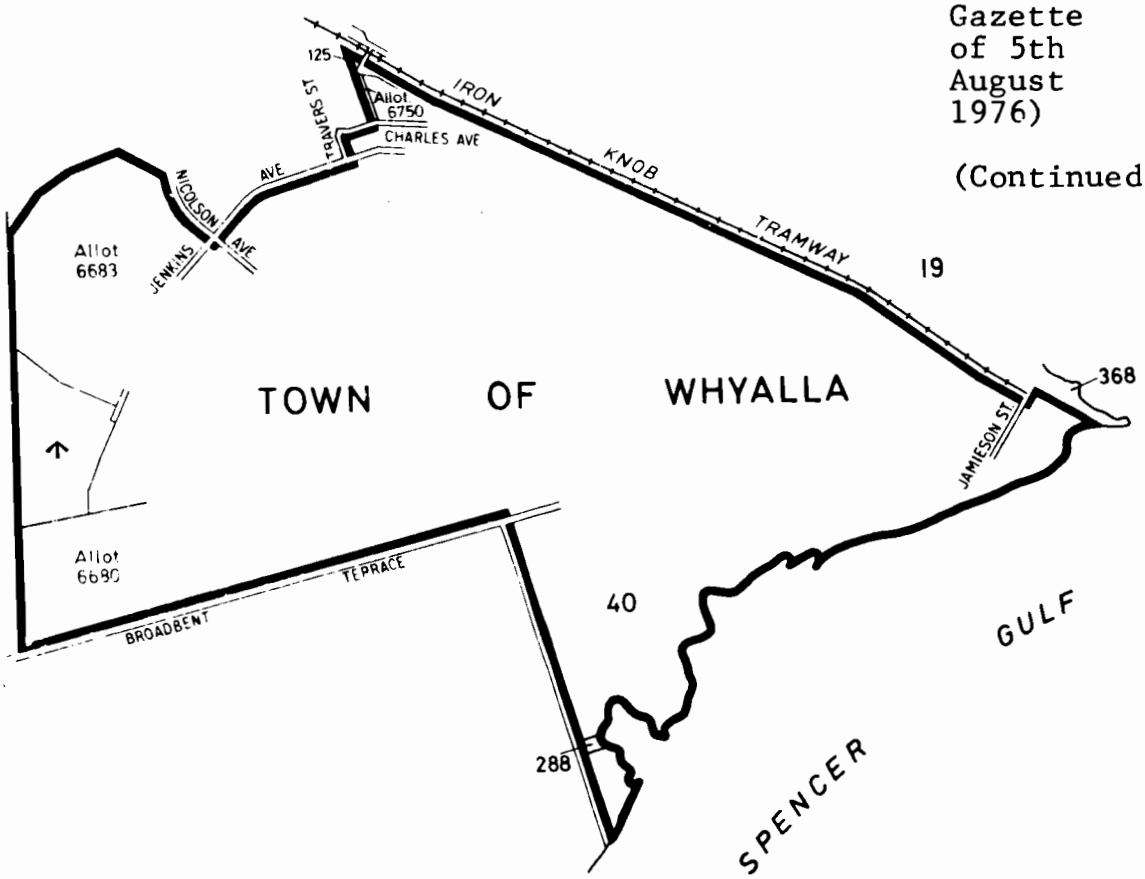

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 381

DISTRICT .. .. WHYALLA 14

NUMBER OF ELECTORS:

STUART (Part)	5 369
WHYALLA	11 639
	17 008

Deviation from Quota:
+ 1.33 per cent

NOTES AS TO NAME:

The name Whyalla is of obscure origin. It may come from a native word meaning "place of water" or even from a word meaning "I don't know".

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production south-south-easterly of the western boundary of section 40, hundred of Randell; thence north-north-westerly along said production and boundary to Broadbent Terrace (Lincoln Highway), Town of Whyalla; west-south-westerly along Broadbent Terrace; north along the western boundary of the Town of Whyalla to a north-western corner of allotment 6683; generally north-easterly and south-easterly along north-western and north-eastern boundaries of said allotment; south-easterly along Nicolson Avenue; generally north-easterly along Jenkins Avenue; north-westerly along Travers Street; north-easterly along Charles Avenue; north-westerly along the south-western boundaries of allotment 6750 and section 125 and production to the centre of Iron Knob tramway; south-easterly along tramway to intersect the production north-easterly of the south-eastern boundary of Jamieson Street; north-easterly along a south-eastern boundary of section 19 (a further extension of said side of street); south-easterly along a south western boundary of said section 19 and the south-western boundaries of sections 241 and 368 to the sea coast; thence generally south-westerly following the sea coast to the point of commencement, including all wharves and jetties along the sea coast.

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

DISTRICT .. .. NAPIER 15

GENERAL DESCRIPTION:

This District comprises the old District of Elizabeth, less the City Centre, Elizabeth West and the northern extremity of the suburb of Elizabeth East and an undeveloped area to its east.

The new District now includes the suburbs of Elizabeth Park, Elizabeth Downs, Elizabeth North, Elizabeth Field, Smithfield, Smithfield Plains, MacDonald Park, Penfield Gardens, Angle Vale and One Tree Hill.

NAPIER

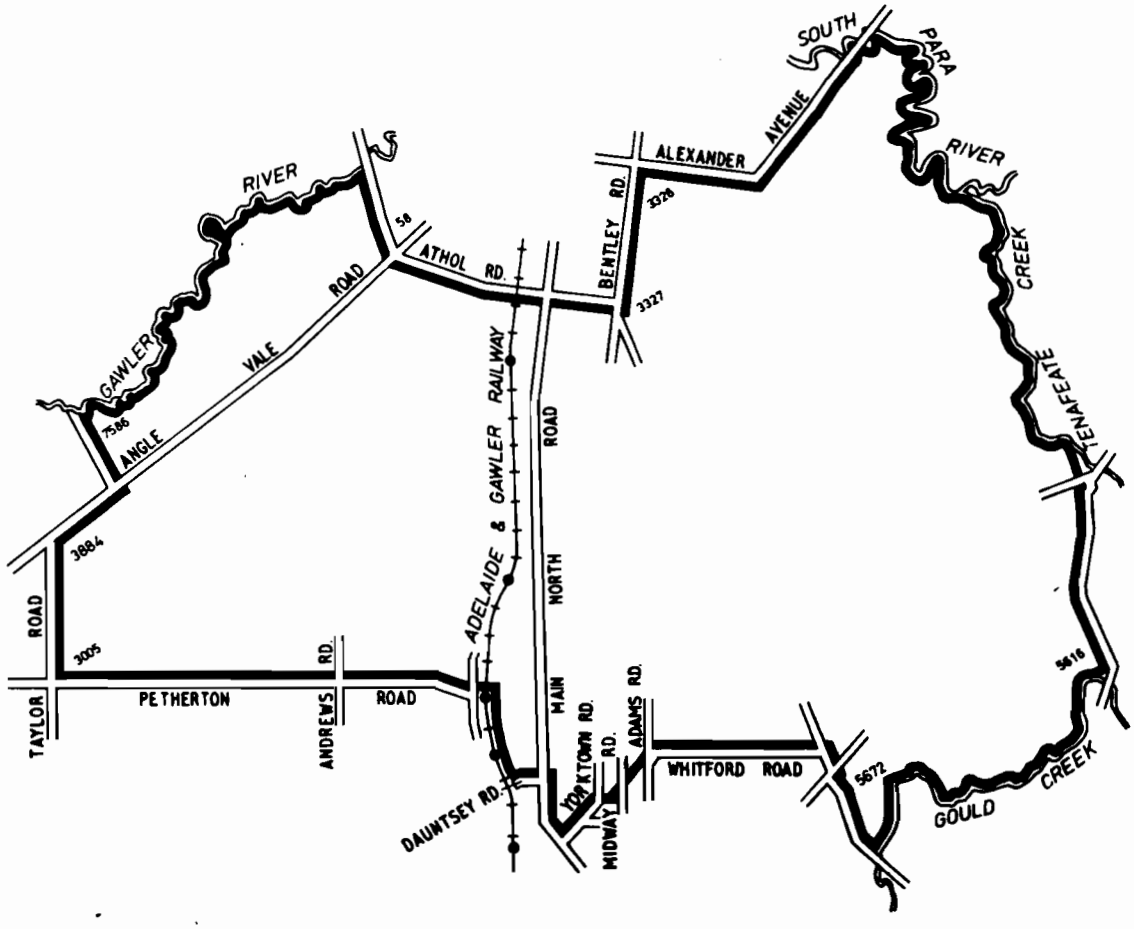

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued)

DISTRICT .....NAPIER

NUMBER OF ELECTORS:

ELIZABETH (Part) 16 140

Deviation from Quota:

-3.84 per cent

NOTES AS TO NAME:

Sir Thomas John Mellis Napier, K.C.M.G. (1882-1976), came to South Australia as a boy. His great intellectual endowments and powerful personality took him to the highest appointments that the State can offer. He was for forty-three years a judge of the Supreme Court, including 25 years as Chief Justice. He was Lieutenant-Governor between 1942 and 1973 and administered government on 179 occasions. He was Chancellor of the University of Adelaide for 14 years from 1948-1961.

TECHNICAL DESCRIPTION:

Commencing at the south-eastern corner of the hundred of Munno Para; thence generally westerly along the south boundary of the said hundred (Gould Creed) to the road south-west of section 5574, hundreds of Munno Para and Yatala; generally northerly along said road intersecting and west of sections 5672 and 4219, hundred of Munno Para; generally northerly along road east of section 4170; north-west along road north-east of sections 4170, 3088 and 3086; south-west along Adams Road, Elizabeth Park to its intersection with the production north-easterly of the south-eastern boundary of reserve in Lands Titles Registration Office Plan No. 9368; south-westerly along said production and boundary, and production to Midway Road; again south-westerly along Midway Road to its intersection with the production south-easterly of the south-western boundary of allotment 4 of Lands Titles Registration Office Plan No. 6942; generally north-westerly along said production and the south-western boundaries of the said allotment 4; south-westerly along Yorktown Road; north and north-easterly along Main North Road; north westerly along Dauntsey Road, Elizabeth North, and production to the Adelaide and Gawler railway; generally north-easterly along said railway to its intersection with the production

south-easterly of Petherton Road, Elizabeth Field; generally north-westerly along latter production and road and road south-west of sections 4072, 3897 and 3005; north-east along road north-west of sections 3005 and 3884; easterly along road north of section 3884 and intersecting section 4145; northerly along road west of section 7562 and 7586; generally easterly following the Gawler River to the road intersecting section 58; generally southerly and south-easterly following the road intersecting section 58, west of sections 113 and 3286, and south-west of sections 25, 23 and 1; south-easterly along the south-western boundaries of sections 3199 and 3198 and the road south-west of sections 3197 and 3196;north-easterly along road south-east of sections 3196 and 3211; south-easterly and north-easterly along the road south-west of sections 3334 and 3331 and south-east of sections 3331 3339 and 1027 to the eastern boundary of the hundred of Munno Para; thence generally southerly along latter boundary to the point of commencement.

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Repor 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 383

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 384

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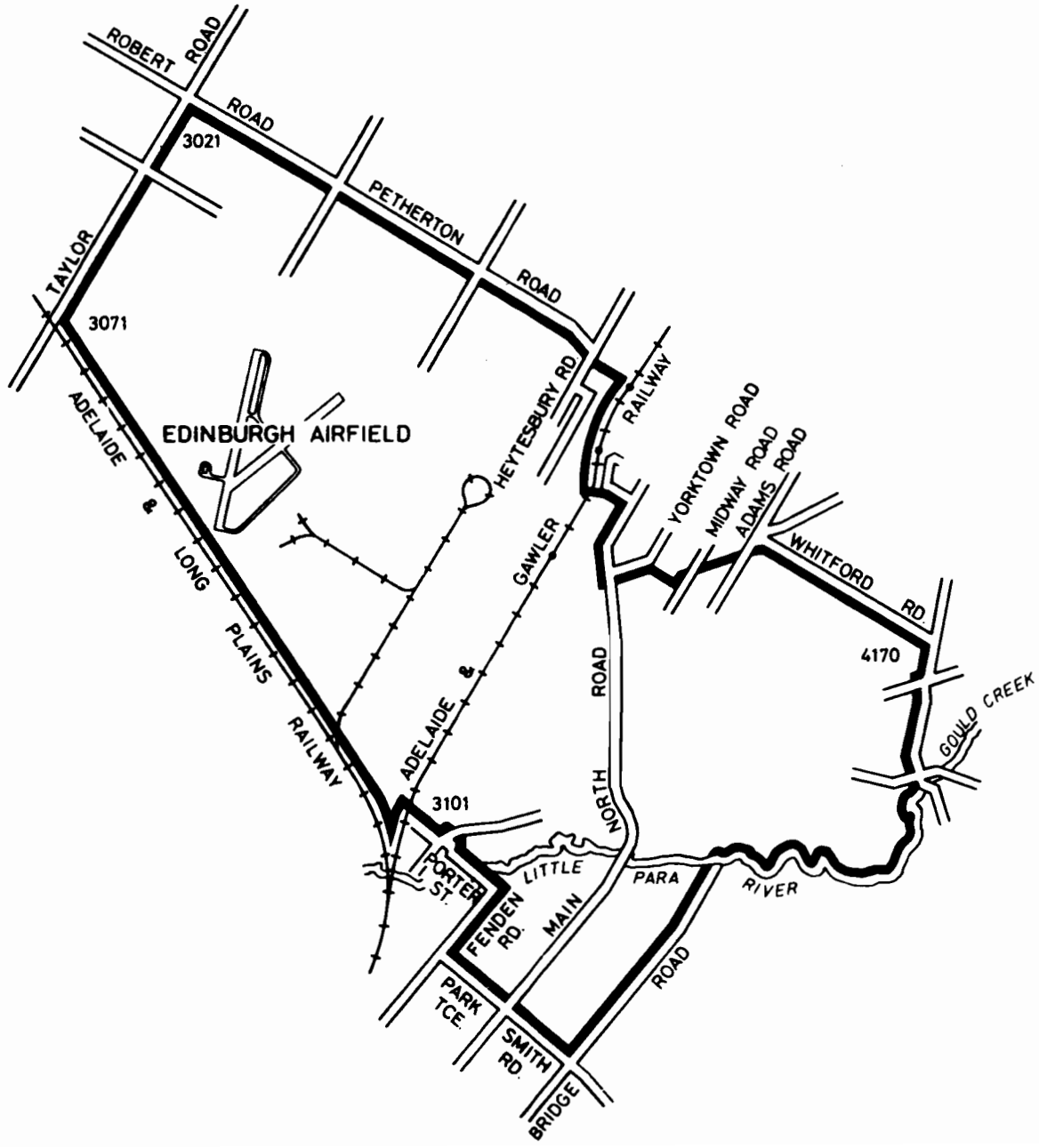
DISTRICT ..... ELIZABETH 16

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Playford north of Cokers Road, less an area between Porter Street and the Little Para River. The whole of Elizabeth East is now included in this District.

Elizabeth City Centre, Elizabeth West, Edinburgh Airfield, Elizabeth South form part of this District which extends in a north-west direction to Taylors Road. 10

ELIZABETH



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 385

Exhibit "B" (Appellants)

Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....ELIZABETH 16

NUMBER OF ELECTORS:

ELIZABETH (Part)	4113	
PLAYFORD (Part)	12200	
	16313	

Deviation from Quota:
-2.81 per cent

NOTES AS TO NAME:

Name of city gazetted on 24th November, 1955. Named after Her Majesty Queen Elizabeth II.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Smith Road and Bridge Road, Salisbury East; thence generally north-easterly along Bridge Road to the southern boundary of the hundred of Munno Para; generally easterly and northerly along the latter boundary (Little Para River) to the road south-west of section 5574, hundreds of Yatala and Munno Para generally northerly along said road and road intersecting and west of sections 5672 and 4219, hundred of Munno Para; generally northerly along road east of section 4170; north-west along road north-east of sections 4170, 3088 and 3086; south-west along Adams Road, Elizabeth Park to its intersection with the production north-easterly of the south-eastern boundary of reserve in Lands Titles Registration Office Plan No. 9368; South-westerly along said production and boundary production to Midway Road, Elizabeth East; again south-westerly along Midway Road to its intersection with the production south-easterly of the south-western boundary of allogment 4 of Lands Titles Registration Office Plan No. 6942; generally north-westerly along said production and the south-western boundaries of said allotment 4; south-westerly along Yorktown Road; north and north-easterly along Main North Road, Elizabeth; north-westerly along Dauntsey Road and production to the Adelaide and Gawler railway; generally north-easterly along said railway to its intersection with the production south-easterly of Petherton Road, Elizabeth West; generally north-westerly along latter production and road and road north-east of sections 120, 3899 and 3021; south-west along road north-west of sections 3021, 3039, 3054 and 3071 to the Adelaide and Long Plains railway;

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976)

(continued)

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south-easterly along said railway; northerly along the Adelaide and Gawler railway to Commercial Road, Elizabeth South; south-easterly along said road; north-easterly along John Rice Avenue; south and south-easterly along Porter Street and Saints Road, Salisbury Park; south-west along Fenden Road, Salisbury Plain; thence south-east along Park Terrace and Smith Road to the point of commencement.

10

386 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

DISTRICT .....SALISBURY 17

GENERAL DESCRIPTION:

This District comprises the old District of Salisbury, less the Gepps Cross, Cavan and Pooraka area. A small area between Porter Street and the Little Para River has been included.

Exhibit "B"

(Appellants)

Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

SALISBURY

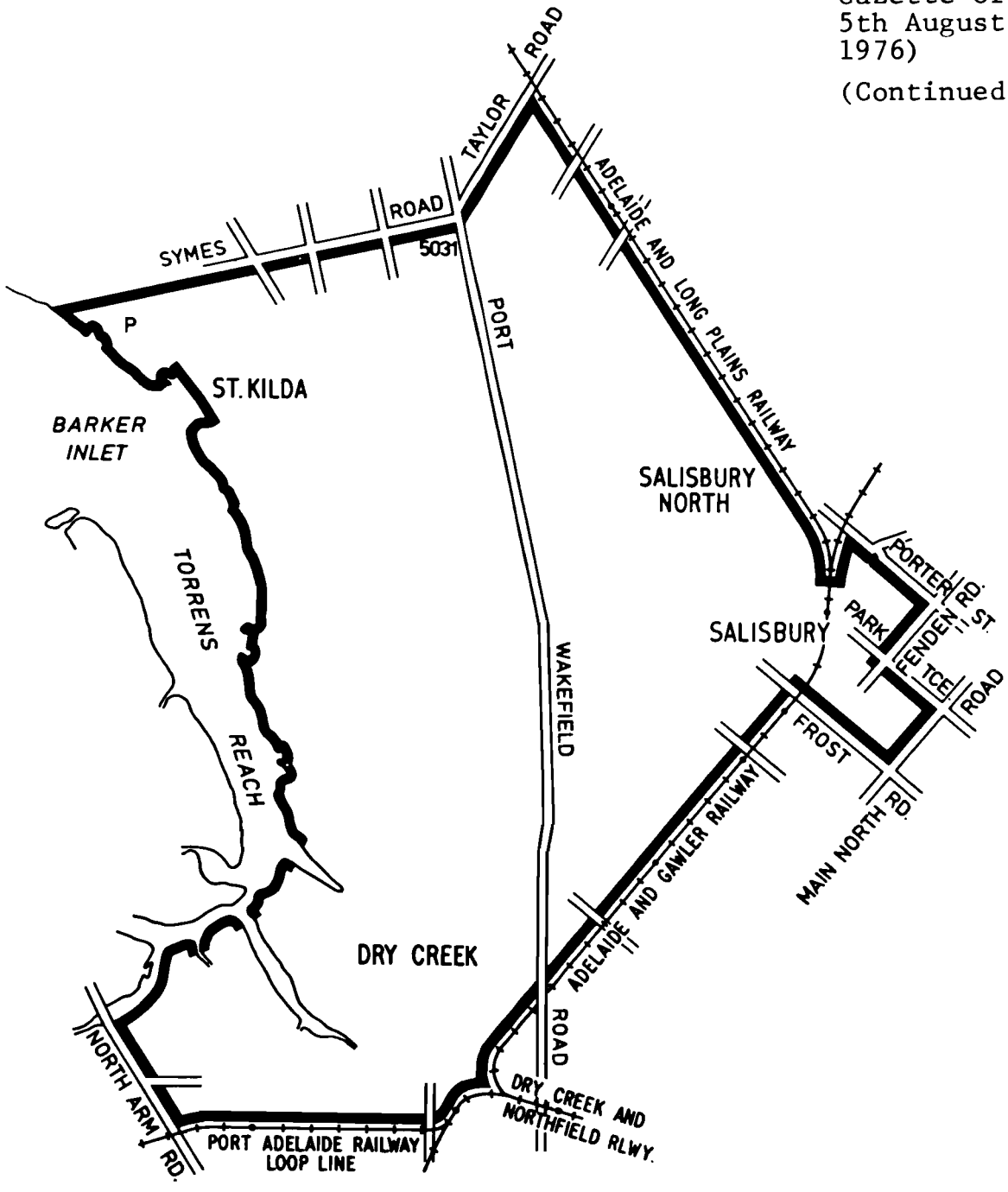


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 387

DISTRICT.....SALISBURY 17

NUMBER OF ELECTORS:

PLAYFORD (Part).....619

SALISBURY (Part).....16490

17109

Deviation from Quota:
+1.93 per cent

NOTES AS TO NAME:

Named by John Harvey, grantee (in1847), after the birthplace of his wife in Wiltshire, England.

TECHNICAL DESCRIPTION:

Commencing at the intersection of North Arm Road and Port Adelaide railway loop line, Wingfield; thence north-west along said road; north-easterly and north-westerly following the south-eastern and eastern sides of creek. North Arm, Torrens Reach, Barker Inlet and the sea coast to the intersection of the production westerly of the northern boundaries of sections P and 182, hundred of Port Adelaide; easterly along said production and boundaries and road north of sections 178, 5028 and 5031; north-easterly in the hundred of Munno Para along road north-west of sections 4251, 4263 and 3071 (Taylor Road) to the Adelaide and Long Plains railway; south-easterly along said railway; northerly along the Adelaide and Gawler railway to Commercial Road, Salisbury; south-easterly along said road; north-easterly along John Rice Avenue; south and south-easterly along Porter Street and Saints Road; south-west along Fenden Road; south-east along Park Terrace, Brahma Lodge; south-west along Main North Road; north-west along Frost Road to the Adelaide and Gawler railway; south-westerly and southerly along said railway to the Dry Creek and Northfield railway; west along said railway; south-west along Adelaide and Gawler railway ; thence west along Port Adelaide railway loop line to the point of commencement.

388 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

Exhibit"B"
(Appellants)

DISTRICT .....PLAYFORD 18

GENERAL DESCRIPTION:

This District comprised the southern part of the old District of Playford up to Smiths Road. It has been extended in a north-west direction to the Gawler Railway line to include Salisbury South, Parafield, The Levels, Cavan, Gepps Cross, Pooraka and that part of Northfield lying north of Grand Junction Road.

Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

PLAYFORD

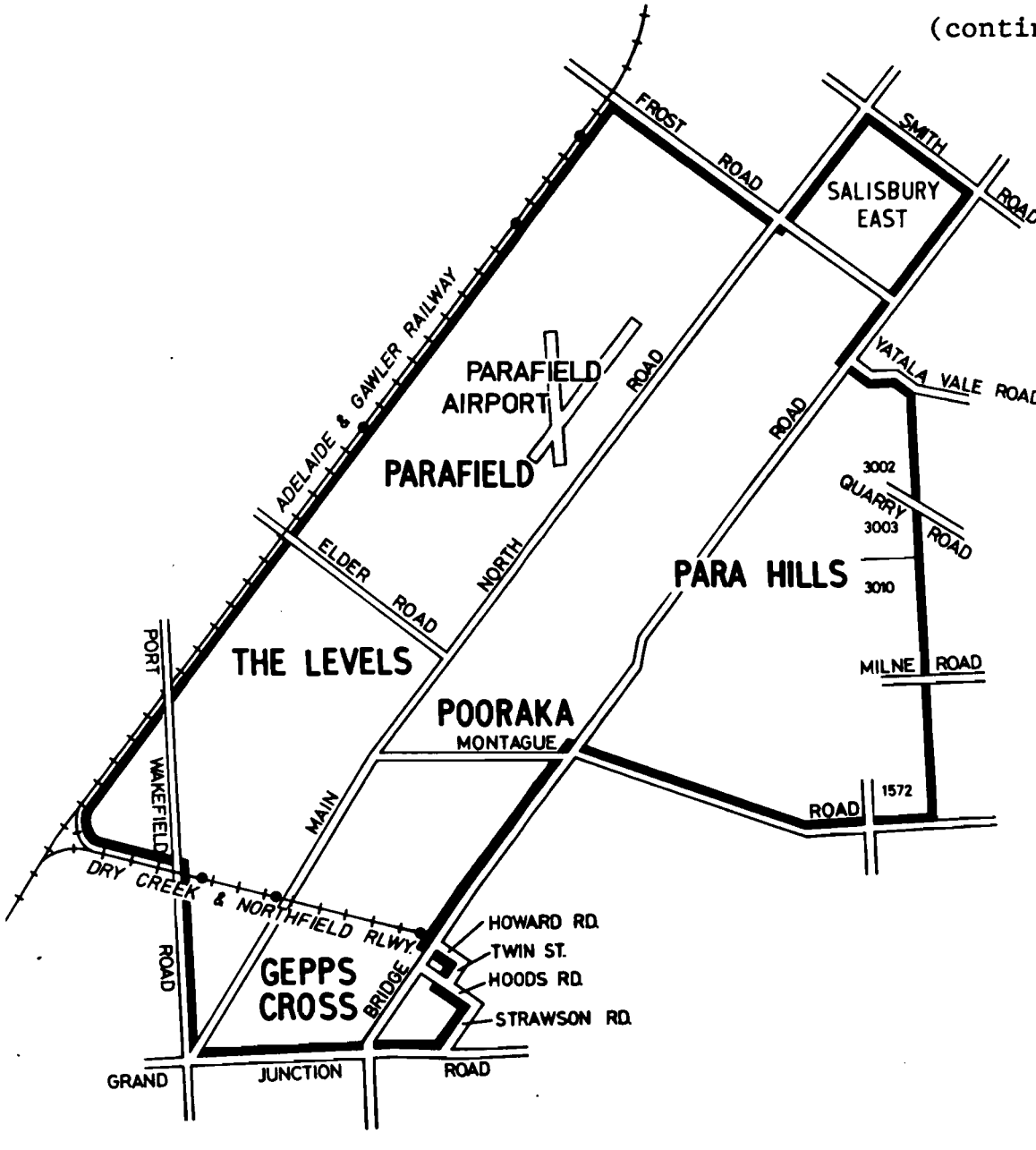


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 389

DISTRICT.....PLAYFORD 18

NUMBER OF ELECTORS:

PLAYFORD (Part)	13404
SALISBURY (Part)	3874
	17278

Deviation from Quota:
+2.94 per cent

NOTE AS TO NAME:

Thomas Playford (1837-1915) was Premier of South Australia from 1887 to 1889. He attended the Australasian Federal Conference in 1890. He was first Australian Minister of Defence in the Deakin Government. Sir Thomas Playford, G.C.M.G. (born 1896), his grandson, was Premier of South Australia 1938-1965. The development of the Northern Metropolitan Area is one of the most durable and significant events of his Premiership.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Grand Junction Road and Port Wakefield Road, Gepps Cross; thence east along Grand Junction Road; north-east along Strawson Road, Northfield; north-west along Hoods Road; north-east along Twin Street; north-west along Howard Road; north-east along Bridge Road, Pooraka; south-east and east along Montague Road, Ingle Farm; north along the east boundaries of sections 1572, 3010 and 3002, hundred of Yatala; northerly by a straight line from the north-eastern corner of section 3002 to the southern corner of section 521 to its intersection with Yatala Vale Road, Para Hills; generally north-westerly along latter road; north-east along Bridge Road, Salisbury East; north-west along Smith Road; south-west along Main North Road; north-west along Frost Road, Salisbury South to the Adelaide and Gawler railway; south-westerly and south-easterly along said Adelaide and Gawler railway and the Dry Creek and Northfield railway to Port Wakefield Road, Cavan; thence south along said road to the point of commencement.

390 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

Exhibit "B" (Appellants)

Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....NEWLAND 19

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Modbury North which has been extended south to include the suburbs of Ridgehaven, Redwood Park, part of Banksia Park as far as Elizabeth Street and southerly to Milne Road.

A small area of Salisbury East that lies east of Bridge Road has been added.

NEWLAND

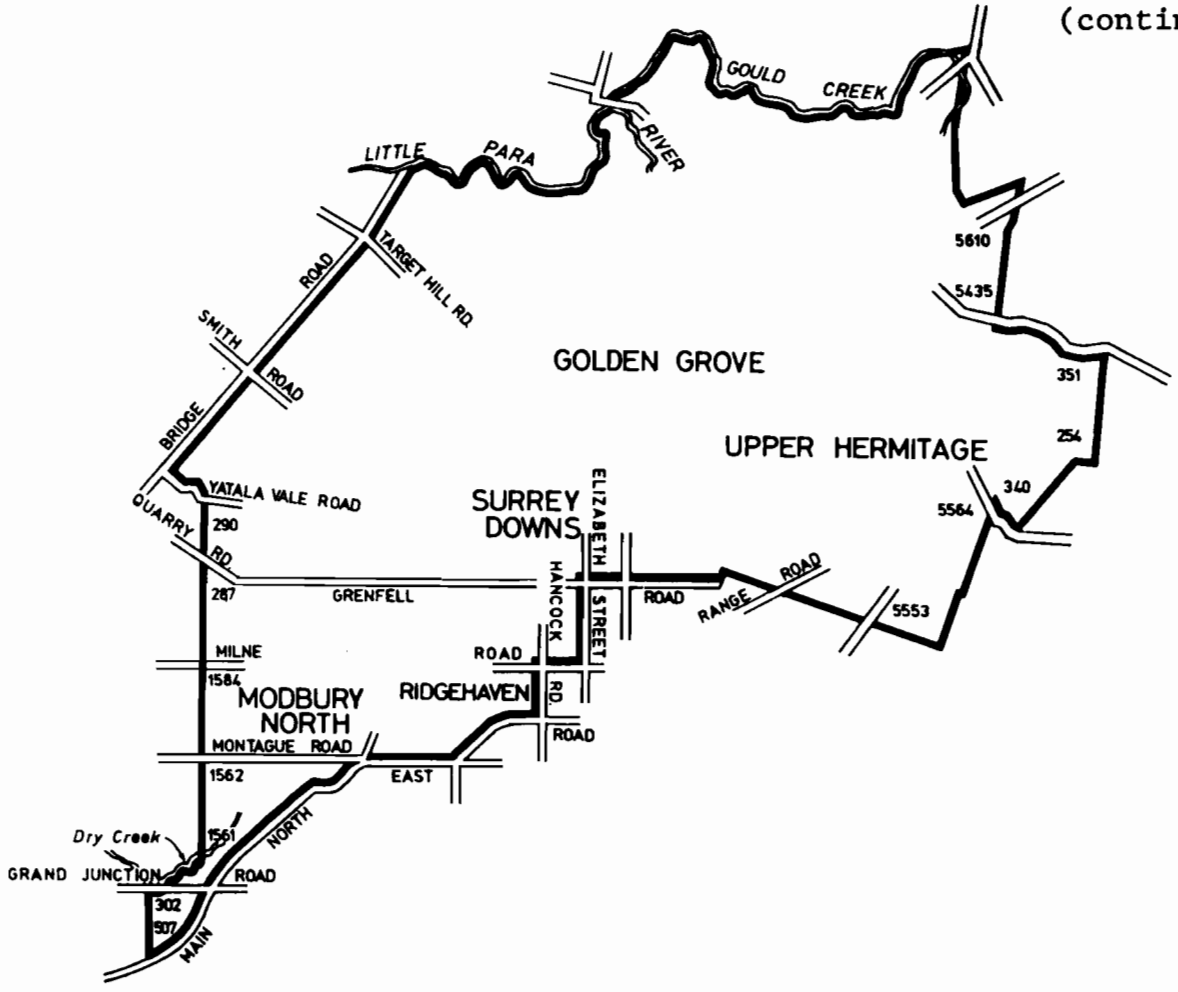


Exhibit "B" August 5, 1976] THE SOUTH AUSTRALIAN

(Appellants) GOVERNMENT GAZETTE 391

Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....NEWLAND 19

NUMBER OF ELECTORS:

HIGHBURY (Part).....	5135
MODBURY NORTH.....	11272
PLAYFORD (Part).....	154
	16561

Deviation from Quota:
-1.33 per cent

NOTES AS TO NAME:

Simpson Newland (1835-1925) came to South Australia as a child in a pioneer family. He wrote "Paving the Way" and was prominent in the move to lock the River Murray. He also promoted the cause of the North-South railway. His son, Sir Henry Simpson Newland, C.B.E., D.S.O., F.R.C.S. (1873-1969), was one of Australia's most renowned surgeons.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Main North East Road and Hancock Road, Ridgehaven; thence north along Hancock Road; east along Milne Road, Banksia Park; north along Elizabeth Street; east along Grenfell Road. Fairview Park; north-east along the north-west boundary of section 5490, hundred of Yatala; east-south-easterly along the northern boundaries of sections 5490 and 5562, hundred of Yatala and section 5552, hundred of Para Wirra; north-north-easterly along the western boundaries of sections 5551, 988, 5530 and 441 and production to centre of road north-east of section 441; south-easterly along centre of said road to its intersection with the production south-westerly of the north-western boundary of section 371; north easterly along said production and boundary and the northern boundary of sections 371 and 370; north along the east boundaries of sections 254 and 351; westerly along the southern boundaries of sections 418 and 251W; northerly by a straight line to a point 10.06 metres west of the intersection of the southern boundary of section 5610, hundreds of Yatala and Para Wirra and the hundred boundary; northerly, westerly and northerly through sections 5610, 5612, 5613 and 5614, hundreds of Para Wirra and Yatala and section 5616,

hundreds of Yatala, Para Wirra and Munno Para by straight lines parallel to and distant 10.06 metres from the eastern boundary of the hundred of Yatala and situate westerly, southerly and again westerly from the said hundred boundary to the north-eastern corner of the latter hundred; generally westerly along the northern boundary of the said hundred (Gould Creek and Little Para River)to its intersection with Bridge Road, Salisbury Heights; south-westerly along Bridge Road to Yatala Vale Road, Salisbury East; generally south-easterly along Yatala Vale Road to its intersection with a straight line from the southern corner of section 521 to the north-eastern corner of section 3002; southerly along said straight line and the east boundaries of sections 3002, 3010, 1572, 1570, 1566 and 715 to the centre of Dry Creek; generally south-westerly following said creek to intersect the eastern boundary of section 313; southerly along the eastern boundaries of section 313 and part preliminary section 504; thence generally north-easterly following Main North East Road to the point of commencement.

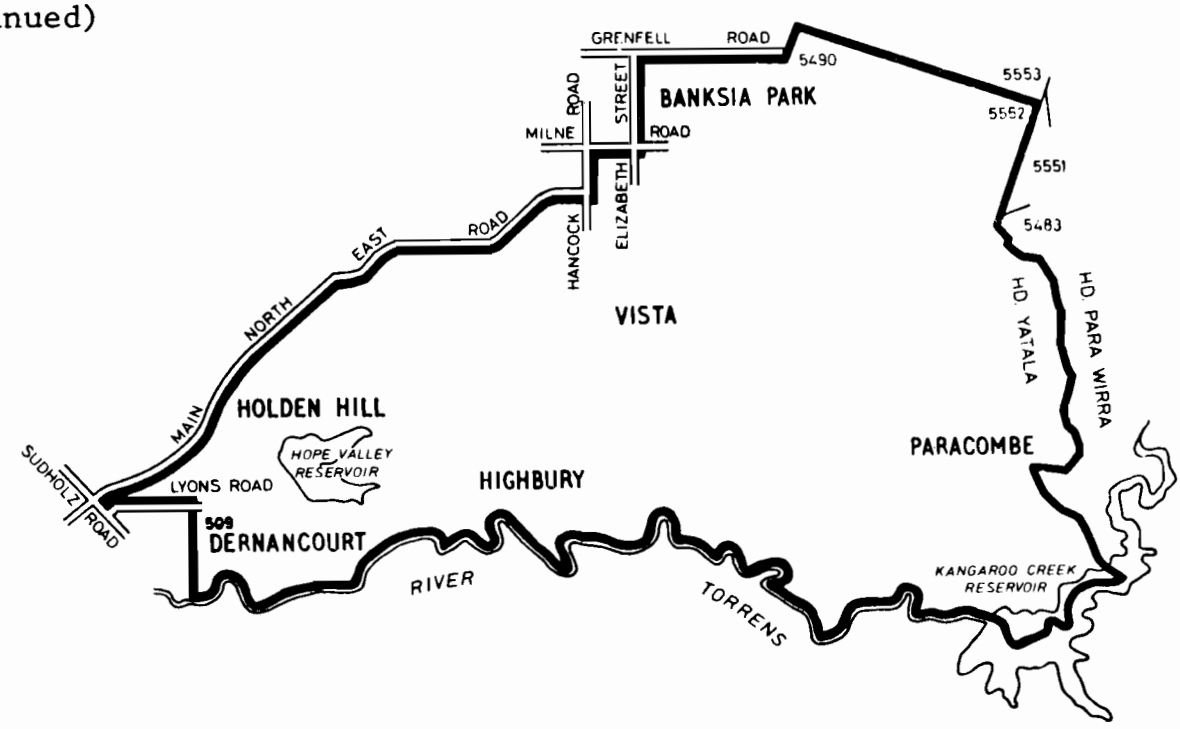
Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p.392

DISTRICT .....TODD 20

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Highbury, less an area in the north-west, bounded by Grenfell Road, Golden Grove Road, North East Road, Hancock Road, Milne Road and Elizabeth Street.

TODD



DISTRICT..... TODD 20

NUMBER OF ELECTORS:

HIGHBURY (Part)..... 16 491

Deviation from Quota:

-1.75 per cent

NOTES AS TO NAME:

Sir Charles Todd, K.C.M.G., M.A. (1826-1910) came to South Australia in 1855 as superintendent of telegraphs and government astronomer. He conceived the idea of the overland telegraph line from Adelaide to Darwin and persuaded the government to undertake the work, which was completed under his supervision after incredible difficulties, in 1872. He also connected Adelaide to Eucla by telegraph line, thus completing the link with Perth. He was a distinguished astronomer and meteorologist.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Sudholz Road and Main North East Road,Holden Hill; thence south-easterly along Sudholz Road; north east and east along Lyons Road; south along the east boundary of part preliminary section 508, hundred of Yatala and production to the River Torrens; generally easterly along the River Torrens to the eastern boundary of the hundred of Yatala; generally northerly along the eastern boundary of the hundred of Yatala to the western boundary of section 5483, hundreds of Yatala and Para Wirra; north-north-easterly along the western boundaries of sections 5483 and 5551, hundred of Para Wirra, to the eastern corner of section 5552; west-north-westerly along the northern boundaries of section 5552, hundred of Para Wirra and sections 5562 and 5490, hundred of Yatala;south-westerly along the western boundary of section 5490; west along Grenfell Road, Banksia Park; south along Elizabeth Street; west along Milne Road; south along Hancock Road, Tea Tree Gully; thence generally south-westerly following the Main North East Road to the point of commencement.

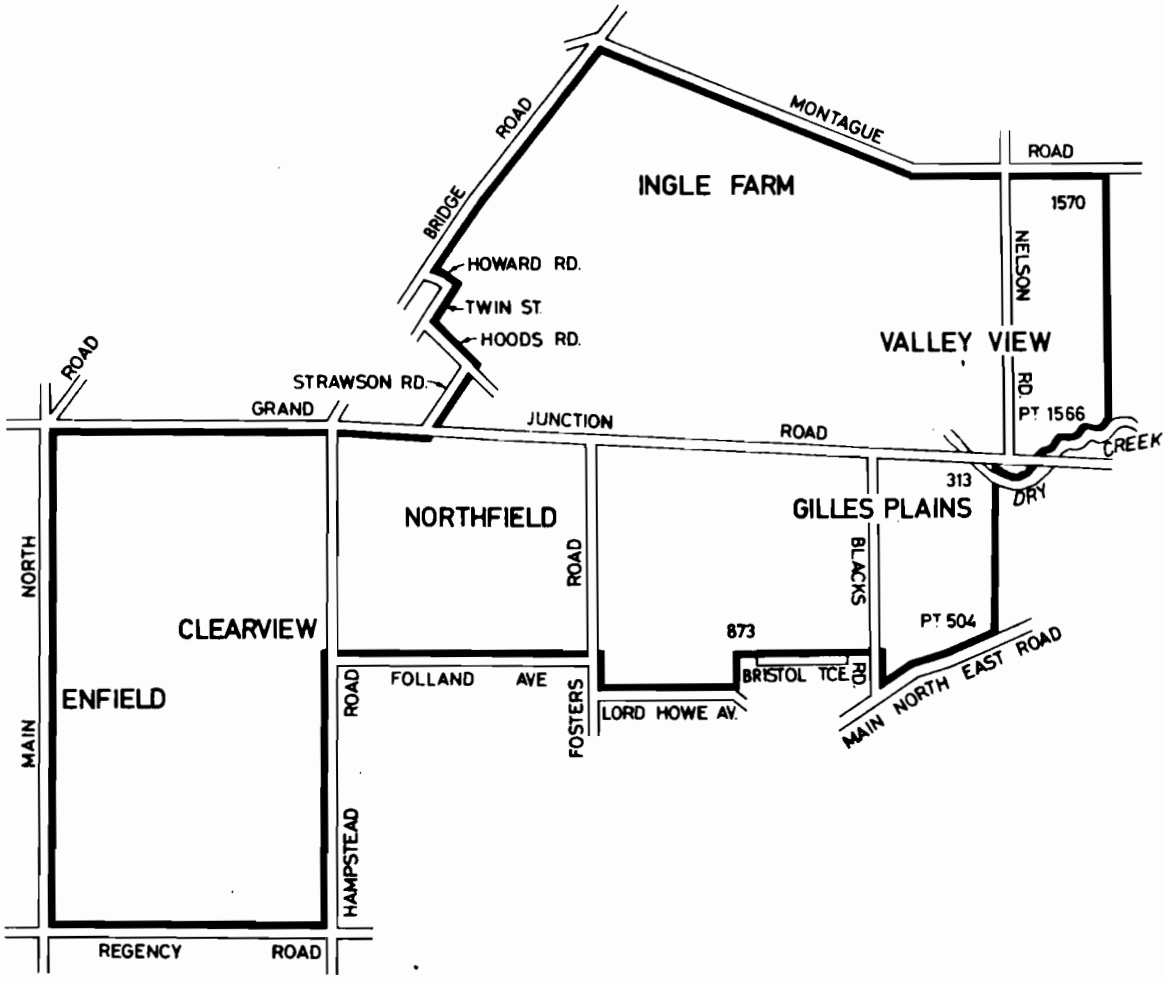
DISTRICT.....FLOREY 21

(appellants) Exhibit "B" Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 394

GENERAL DESCRIPTION:

This District comprises the old District of Florey East and Florey West, less the suburbs of Greenacres and Hillcrest.

FLOREY



DISTRICT.....FLOREY 21

NUMBER OF ELECTORS:

FLOREY EAST (Part).....	8 435
FLOREY WEST (Part).....	9 203
	17 638

Deviation from Quota:

+ 5.08 per cent

NOTES AS TO NAME:

Howard Walter Florey, Baron of Adelaide and Marston (1898-1968), P.R.S., F.R.A.C.P., F.R.C.P., M.D., M.A., Ph.D., B.Sc., was born and educated in South Australia (Rhodes Scholar, 1921). He was knighted for his work in the development of pencillin and later created a peer. He was Chancellor of the Australian National University, and a world renowned scientist.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Grand Junction Road and Main North Road Enfield; thence east along Grand Junction Road; north-east along Strawson Road, Northfied; north-west along Hoods Road; north-east along Twin Street; north-west along Howard Road; north-east along Bridge Road; south-east and east along Montague Road, Ingle Farm; south along the east boundaries of sections 1570, 1566 and 715, hundred of Yatala to the centre of Dry Creek; generally south-westerly following said section 313 and part preliminary section 504; generally south-westerly along Main North East Road, Gilles Plains; north along Blacks Road; west and south along the north and west boundaries of part section 499; west along Lord Howe Avenue; north along Fosters Road; west along Folland Avenue, Northfield; south along Hampstead Road; west along Regency Road, Broadview; thence north along Main North Road to the point of commencement.

(appellants) Exhibit "B" Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued)

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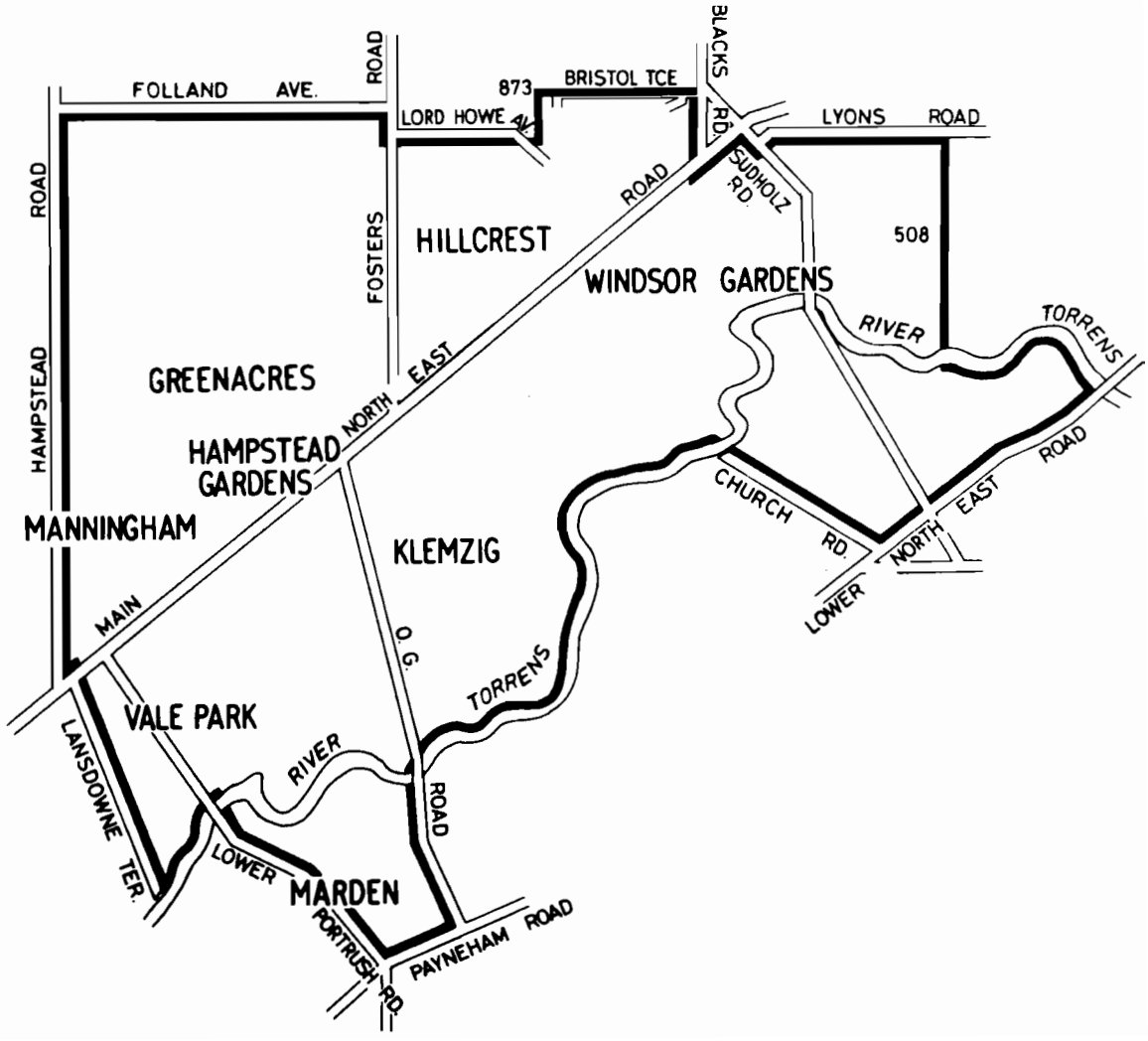
(appellants) Exhibit "B" Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 396

DISTRICT ..... GILLES 22

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Gilles West and the old Subdivision of Gilles East, less the area south of Church Road. The suburbs of Greenacres and Hillcrest have been added.

GILLES



DISTRICT ..... GILLES

NUMBER OF ELECTORS:

FLOREY EAST (Part).....	2 240
FLOREY WEST (Part).....	1 769
GILLES EAST (Part).....	5 060
GILLES WEST	8 251
	17 320

Deviation from Quota:

+ 3.19 per cent

NOTES AS TO NAME:

Osmond Gilles (1797-1866), First Colonial Treasurer.

TECHNICAL DESCRIPTION:

Commencing at the intersection of the River Torrens with Landsdowne Terrace, Vale Park; thence north-westerly along said terrace; south-westerly along Main North East Road; north along Hampstead Road, Manningham; east along Folland Avenue, Northfield; south along Fosters Road; east along Lord Howe Avenue, Hillcrest; north and east along the west and north boundaries of part section 499, hundred of Yatala; south along Blacks Road; north-east along Main North East Road; south-east along Sudholz Road, Windsor Gardens; north-east and east along Lyons Road; southerly along the eastern boundary of part preliminary section 508 and production to the River Torrens; generally easterly following the River Torrens; generally south-westerly along Lower North East Road, Paradise; north-west along Church Road; generally south-westerly following the River Torrens; south and south-east along O.G. Road, Marden; south-west along Payneham Road; generally north-westerly along Lower Portrush Road to the River Torrens; thence generally south-westerly following the River Torrens to the point of commencement.

22 Exhibit "B" (appellants) Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 397

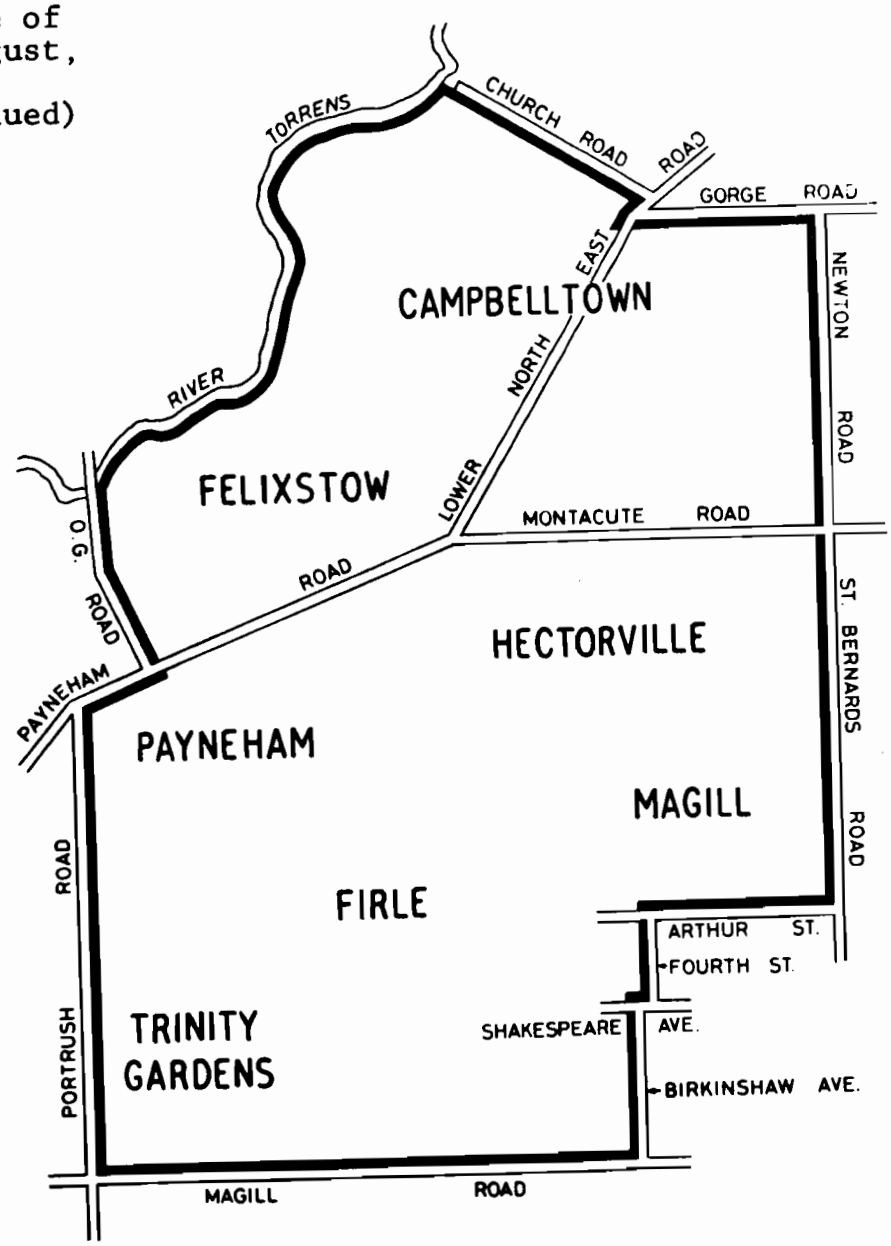
(appellants) Exhibit " B" Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 398

DISTRICT ..... HARTLEY 23

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Gilles East south of Church Road, together with part of the Subdivision of Coles west of St. Bernards Road.

HARTLEY



DISTRICT ..... HARTLEY

NUMBER OF ELECTORS:

COLES (Part).....	10 935
DAVENPORT (Part)	76
GILLES EAST (Part)	6 236
	17 247

Deviation from Quota:

+ 2.75 per cent

NOTES AS TO NAME:

John Anderson Hartley (1844-1896),was appointed on 1st December, 1875, to be the first executive head in the newly created system of compulsory education. During more than two decades he shaped the course of public education in South Australia. His powerful personality and far sighted decisions influenced for generations the system which he created.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Portrush Road and Magill Road, Trinity Gardens; thence north along Portrush Road; north-east along Payneham Road, Payneham; north-west and northerly along O.G. Road, Felixstow; generally north-easterly along the River Torrens; south-east along Church Road, Campbelltown; along Gorge Road; south along Newton Road, Campelltown, and St. Bernards Road, Hectorville and Magill; west along Arthur Street; generally southerly along Fourth Street and Birkinshaw Avenue, Tranmere; thence west along Magill Road to the point of commencement.

23 (appellants)

Exhibit "B" Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976)

(continued)

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Exhibit "B" (appellants) Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued)

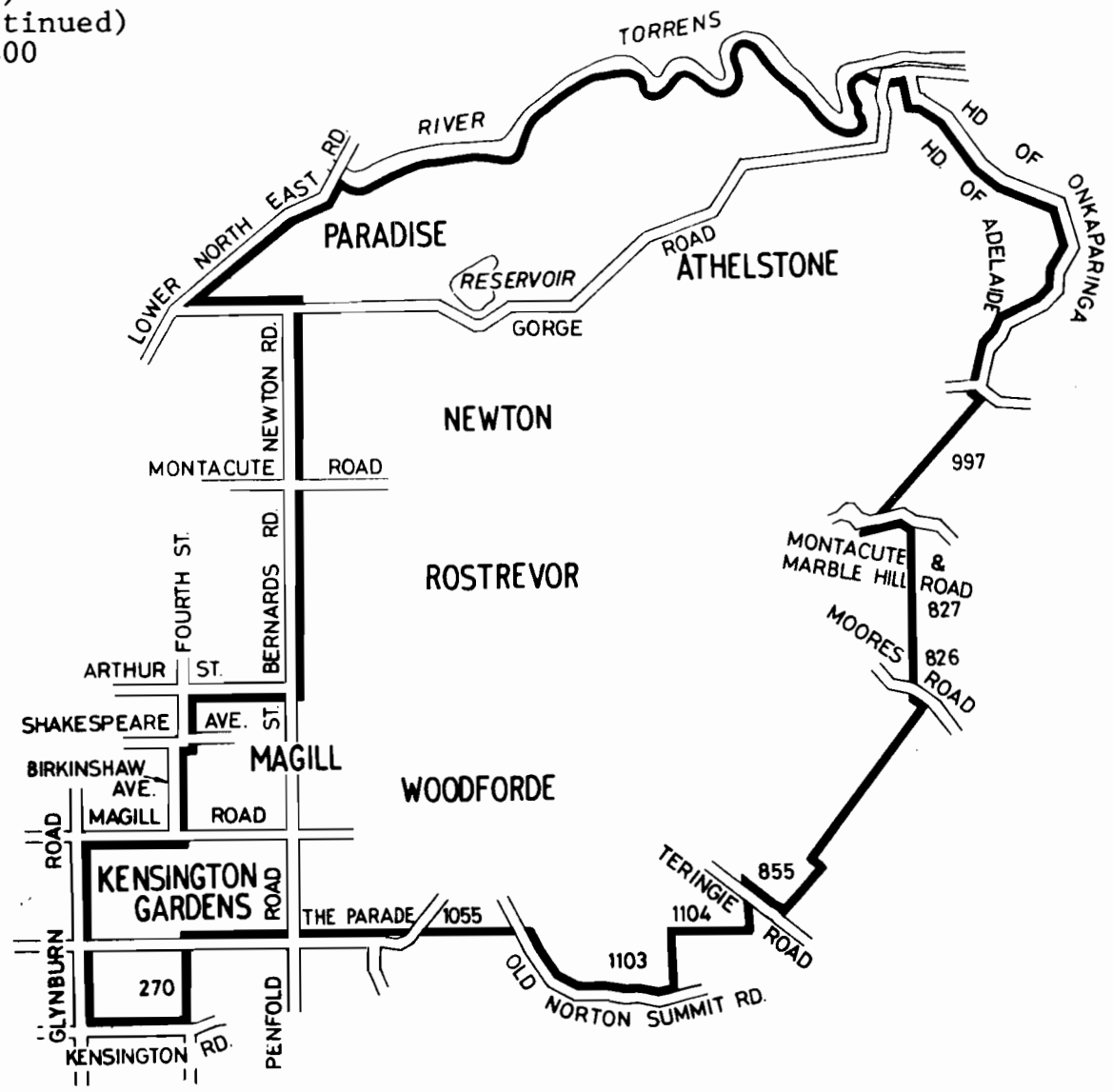
DISTRICT ..... COLES 24

GENERAL DESCRIPTION:

The District comprises the old District of Coles, less the part west of St. Bernards Road. This District has been extended in a southerly direction to Norwood Parade to include the suburbs of Woodforde and Kensington Gardens and the suburb of Magill up to Arthur Street.

p. 400

COLES



DISTRICT ..... COLES 24

NUMBER OF ELECTORS:

COLES (Part)	10 769
DAVENPORT (Part)	6 664
	17 433

Deviation from Quota:

+ 3.86 per cent

NOTES AS TO NAME:

Sir Jenkin Coles (1842-1911) was Speaker of the House of Assembly from 1890-1911, then a record term in Australia.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Magill Road and Glynburn Road, Kensington Gardens; thence south along Glynburn Road; east along Kensington Road; north along the east boundary of section 270, hundred of Adelaide; east along The Parade, Magill, the south boundaries of sections 343 and 1055 and production to Old Norton Summit Road, Woodforde; south-easterly and easterly along latter road; north along the east boundary of section 1103; east and north along the south and east boundaries of section 1104; south-easterly, north-easterly, and north-westerly following the boundaries of section 855; north-easterly along the north-western boundaries of former section 991; north along the west boundary of section 827; westerly and north-easterly along the southern and north-western boundaries of section 997; generally northerly along the eastern boundary of the hundred of Adelaide to the River Torrens; generally westerly along the River Torrens; generally south-westerly along Lower North East Road, Paradise; easterly along Gorge Road; south along Newton Road, Newton, and St. Bernards Road, Rostrevor; west along Arthur Street, Magill; generally southerly along Fourth Street and Birkinshaw Avenue, Tranmere; thence west along Magill Road to the point of commencement.

Exhibit "B" (appellants) Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 401

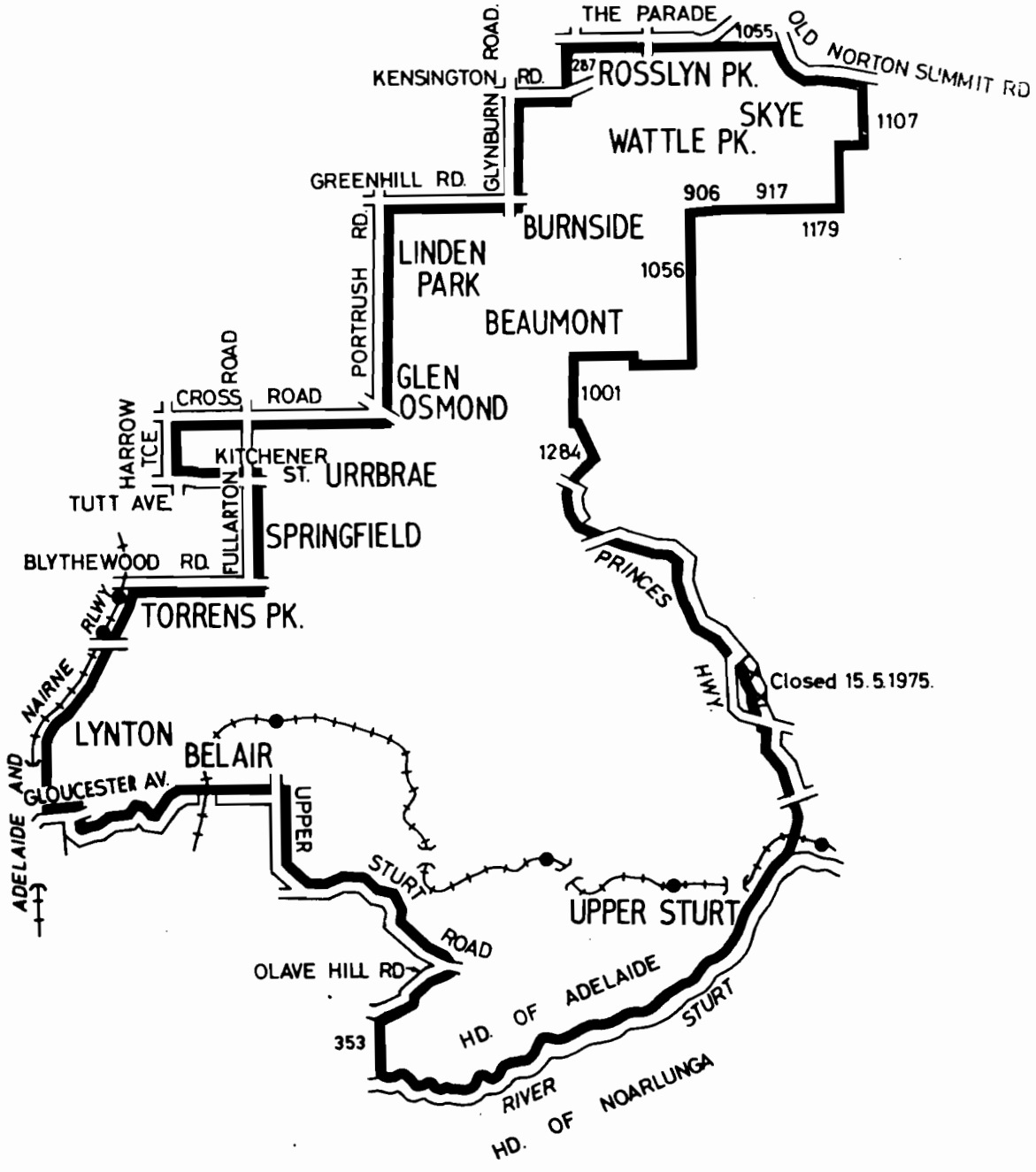
Exhibit "B" (appellants) Electoral District Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 402

DISTRICT..... DAVENPORT 25

GENERAL DESCRIPTION:

The District comprises the old District of Davenport, less the area in Magill Suburb north of Norwood Parade and the suburb of Kensington Gardens. Areas bounded by Cross Road, Harrow Terrace, Kitchener/Claremont Avenue, including Urrbrae, together with the northern and eastern parts of the old Subdivision of Fisher North have been added. This latter area includes the suburbs of Upper Sturt, Belair, Springfied, that part of the suburb of Netherby which is east of Fullarton Road, the part of the suburb of Torrens Park south of Blythewood Road and the Belair National Park.

DAVENPORT



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 403

EXHIBIT "B"
(Appellants)
Districts Electoral Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976)
(continued)

DISTRICT.....DAVENPORT

NUMBER OF ELECTORS:

BRAGG (Part)	775
DAVENPORT (Part)	11216
FISHER NORTH (Part)	5077
	17068

Deviation from Quota:

+ 1.69 per cent

NOTES AS TO NAME:

Sir Samuel Davenport, K.C.M.G. (1818-1906), legislator, merchant and banker, resided in this district for many years. He encouraged the manufacture of olive oil and tobacco in South Australia.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Adelaide and Nairne Railway and Gloucester Avenue, Belair; thence generally easterly along Gloucester Avenue, Grevillea Way, Gum Grove, Neate Avenue, Gratton Street and Laffers Road; south and generally south-easterly along Upper Sturt Road; south-westerly along Olave Hill Road, Hawthorndene and road south-east of section 350, hundred of Adelaide; south along the east boundary of section 353; generally north-easterly along the south-eastern boundary of the hundred of Adelaide to the South Eastern Freeway, Crafers West; westerly along the South Eastern Freeway; generally northerly along road west of section 986 and road closed 15th May, 1975 to the South Eastern Freeway; generally north-westerly along said freeway and Princes Highway; westerly and northerly along the southern and western boundaries of section 1286 to the southern corner of section 1284; north-easterly and north-westerly along the south-eastern and north-eastern boundaries of section 1284; northerly and easterly following the boundaries of part section 1001 and easterly and southerly following the boundaries of former part section 1001; easterly along the southern boundaries of former sections 1053 and 1054; northerly along the

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued) p. 403

northerly along the eastern boundaries of former section 1054 and sections 1056 and 1057; easterly along the southern boundaries of sections 906 and 917 and former section 919; northerly and easterly along western and northern boundaries of former section 1180 to the south-western corner of section 1107; northerly along the western boundary of section 1107 to Old Norton Summit Road, Skye; westerly and north-westerly along Old Norton Summit Road to its intersection with the production easterly of the south boundary of section 1055; west along latter production and boundary, the south boundary of section 343, and along The Parade, Rosslyn Park; south along the west boundary of section 287; west along Kensington Road, Erindale; south along Glynburn Road; west along Greenhill Road, Linden Park; south along Portrush Road, Glen Osmond; west along Cross Road; south along Harrow Terrace, Kingswood;east along Tutt Avenue and Kitchener Street, Netherby; south along Fullarton Road; west along Blythwood Road, Torrens Park to the Adelaide and Nairne Railway; thence generally southerly along Adelaide and Nairne Railway to the point of commencement.

404 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

Exhibit "B" (Appellants)

Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....NORWOOD 26

GENERAL DESCRIPTION:

This District is identical with the existing District.

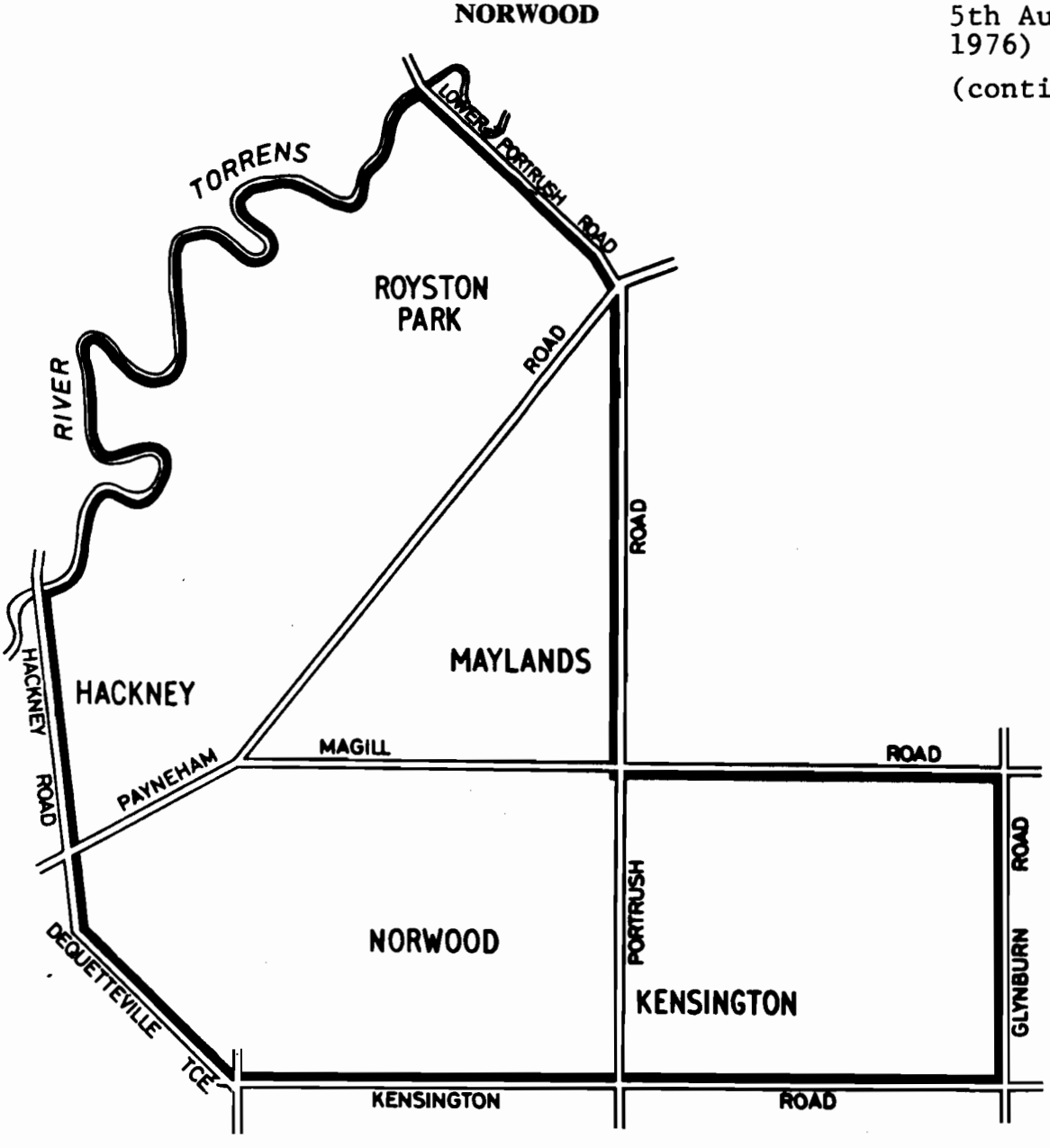


Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....NORWOOD 26

NUMBER OF ELECTORS:

NORWOOD.....	8805
ST. PETERS.....	8805
	17610

Deviation from Quota:

+4.92 per cent

NOTES AS TO NAME:

Norwood was first laid out in 1838 by Samuel Reeves and named after a village in England.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Dequetteville Terrace and Kensington Road, Norwood; thence north-west and north along Dequetteville Terrace, Kent Town; north along Hackney Road, Hackney; generally north-easterly along the River Torrens; south-east along Lower Portrush Road, Marden; south along Portrush Road, Evandale; east along Magill Road, Beulah Park; south along Glynburn Road, Kensington Park; thence west along Kensington Road to the point of commencement.

406 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

DISTRICT.....BRAGG 27

GENERAL DESCRIPTION:

The District comprises the old Subdivisions of Leabrook and Bragg, less the area south of Cross Road.

Exhibit "B" (Appellants)

Districts Electoral Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

BRAGG

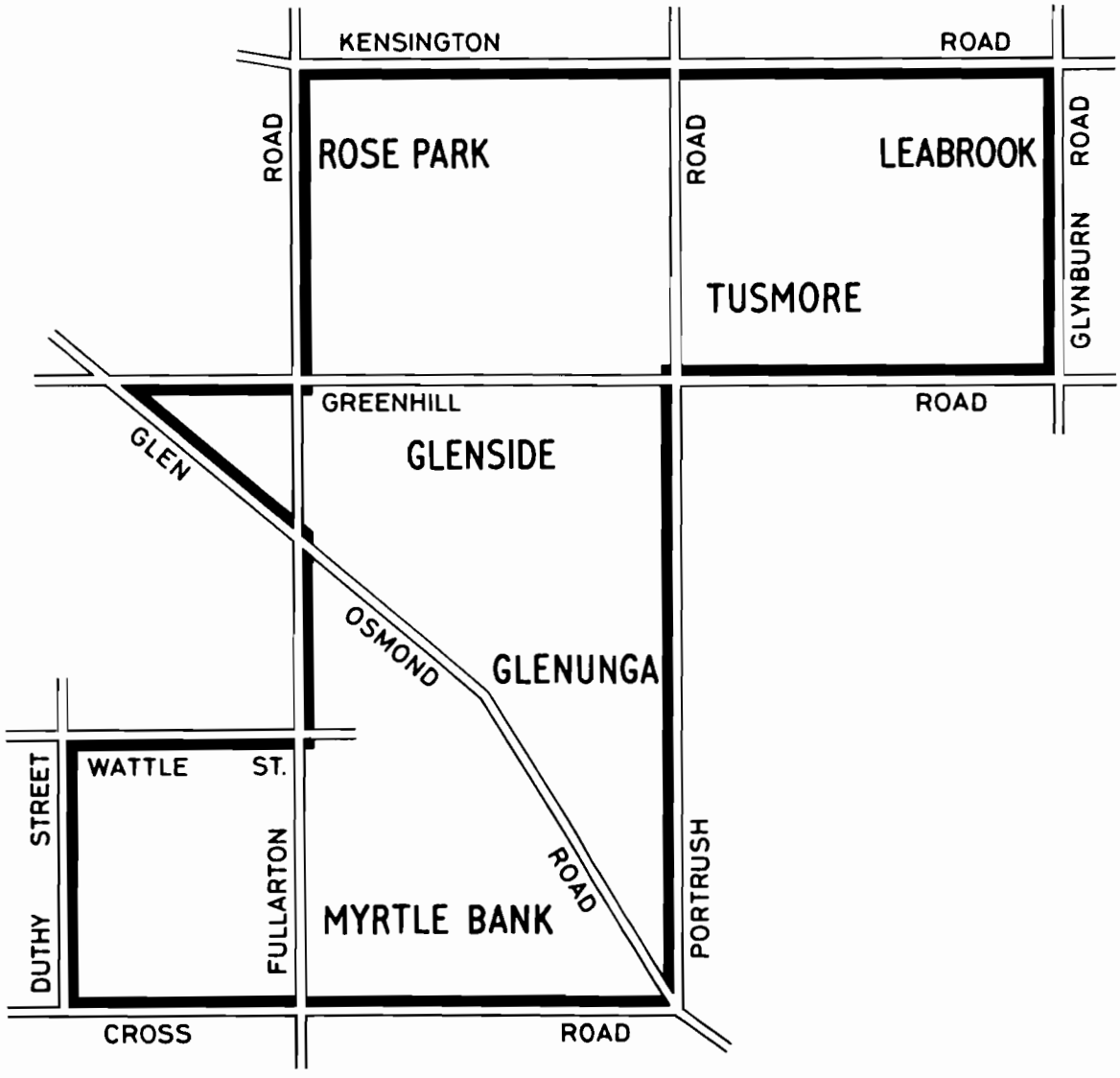


Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

August 5, 1976/ THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 407

DISTRICT.....BRAGG 27

NUMBER OF ELECTORS:

BRAGG (Part)	15766
LEABROOK	1534
	17300

Deviation from Quota:

+3.07 per cent

NOTES AS TO NAME:

Sir William Bragg, O.M., K.B.E., P.R.S., M.A., D.Sc. (1862-1942), was Professor of Physics at the University of Adelaide, 1886-1908, and was a member of the Council of that University and of the School of Mines. His son, Sir Lawrence Bragg, O.B.E., M.C., F.R.S., M.A., D.Sc., LL.D., Ph.D., was born and educated in Adelaide. Father and son jointly were awarded a Nobel Prize in 1915.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Cross Road and Portrush Road, Glen Osmond; thence north along Portrush Road, east along Greenhill Road, Tusmore; north along Glynburn Road, Hazelwood Park; west along Kensington Road, Marryatville; south and west along the east and south boundaries of the City of Adelaide; south-east along Glen Osmond Road; south along Fullarton Road, Fullarton; west along Wattle Street; south along Duthy Street, Malvern; thence east along Cross Road to the Point of commencement.

Exhibit "B"
(Appellants)
Districts Electoral Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976)
(continued)

DISTRICT.....UNLEY 28

GENERAL DESCRIPTION:

This District is identical with the existing District of Unley. There has been no change in subdivision boundaries.

UNLEY

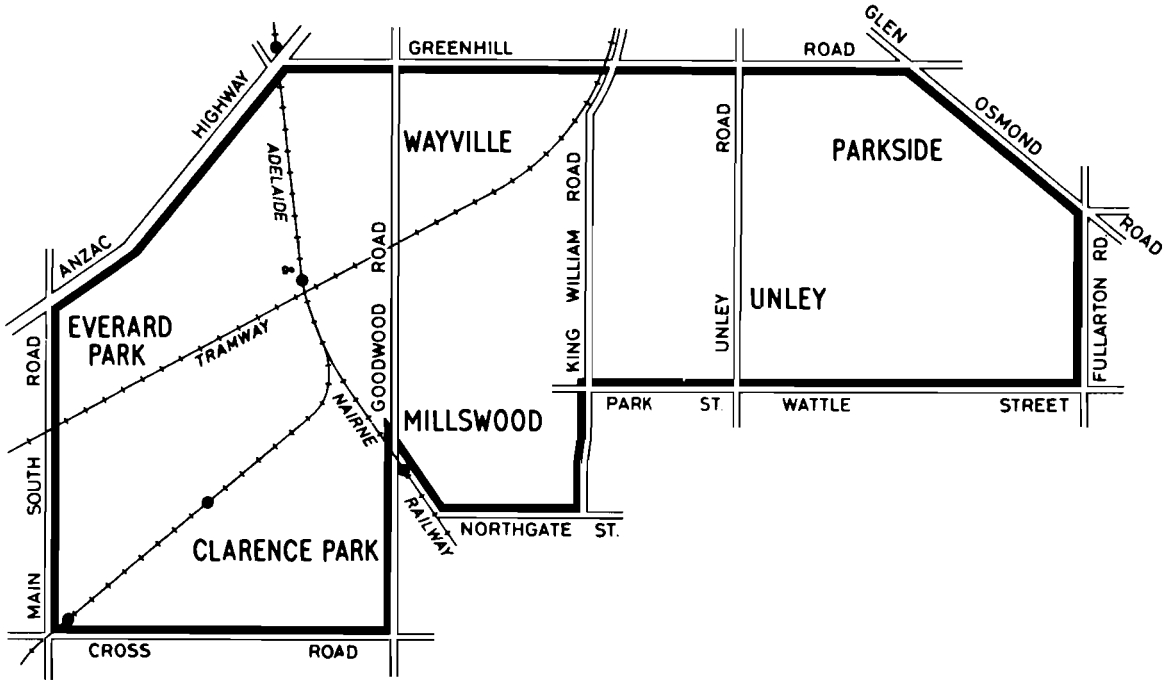


Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 409

DISTRICT.....UNLEY 28

NUMBER OF ELECTORS:

GOODWOOD.....	10119
UNLEY.....	6614
	16733

Deviation from Quota:

-0.31 per cent

NOTES AS TO NAME:

Unley was the maiden name of the wife of Thomas Whistler, owner of Sections laid out in about 1857.

TECHNICAL DESCRIPTION:

Commencing at the south-western corner of the City of Adelaide; thence easterly along the southern boundary of the said city; south-east along Glen Osmond Road, Parkside; south along Fullarton Road; west along Wattle Street and Park Street, Malvern; south along King William Road, Hyde Park; west along Northgate Street, Unley Park; north-west along Adelaide and Nairne railway; south along Goodwood Road, Clarence Park; west along Cross Road; north along Main South Road, Black Forest, thence north-east along Anzac Highway, Everard Park, to the point of commencement.

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....MITCHAM 29

GENERAL DESCRIPTION:

This District is identical with the existing District of Mitcham.

MITCHAM

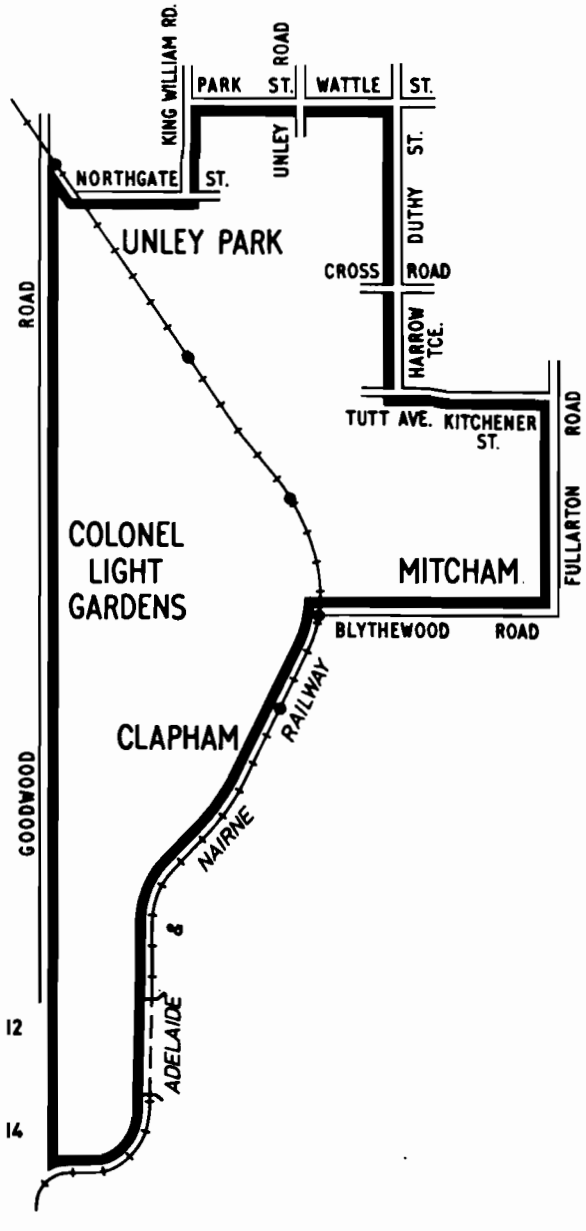


Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....MITCHAM 29

NUMBER OF ELECTORS:

MITCHAM.....17265

Deviation from Quota:

+2.86 per cent

NOTES AS TO NAME:

Was part of a sheep run from about 1840, later subdivided and named Mitcham after the Borough of Mitcham in the London area.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Adelaide and Nairne railway with Northgate Street, Unley Park; thence east along said street; north along King William Road, Hyde Park; east along Park Street and Wattle Street, Malvern; south along Duthy Street and Harrow Terrace, Kingswood; east along Tutt Avenue and Kitchener Street, Netherby; south along Fullarton Road; west along Blythewood Road, Mitcham; generally south-westerly, southerly and westerly following Adelaide and Nairne railway; northerly along the eastern boundaries of sections 14 and 12, hundred of Adelaide, and along Goodwood Road, Panorama, Colonel Light Gardens and Kings Park to Adelaide and Nairne railway, aforesaid; thence south-east along said railway to the point of commencement.

412 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE [August 5, 1976

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....FISHER 30

GENERAL DESCRIPTION:

The District comprises the old Subdivisions of Fisher West, South and East, together with the suburbs of Hawthorndene, Glenalta and Blackwood. A small portion of the old District of Mitchell that lies south of South Road and Sturt Road has been added.

FISHER

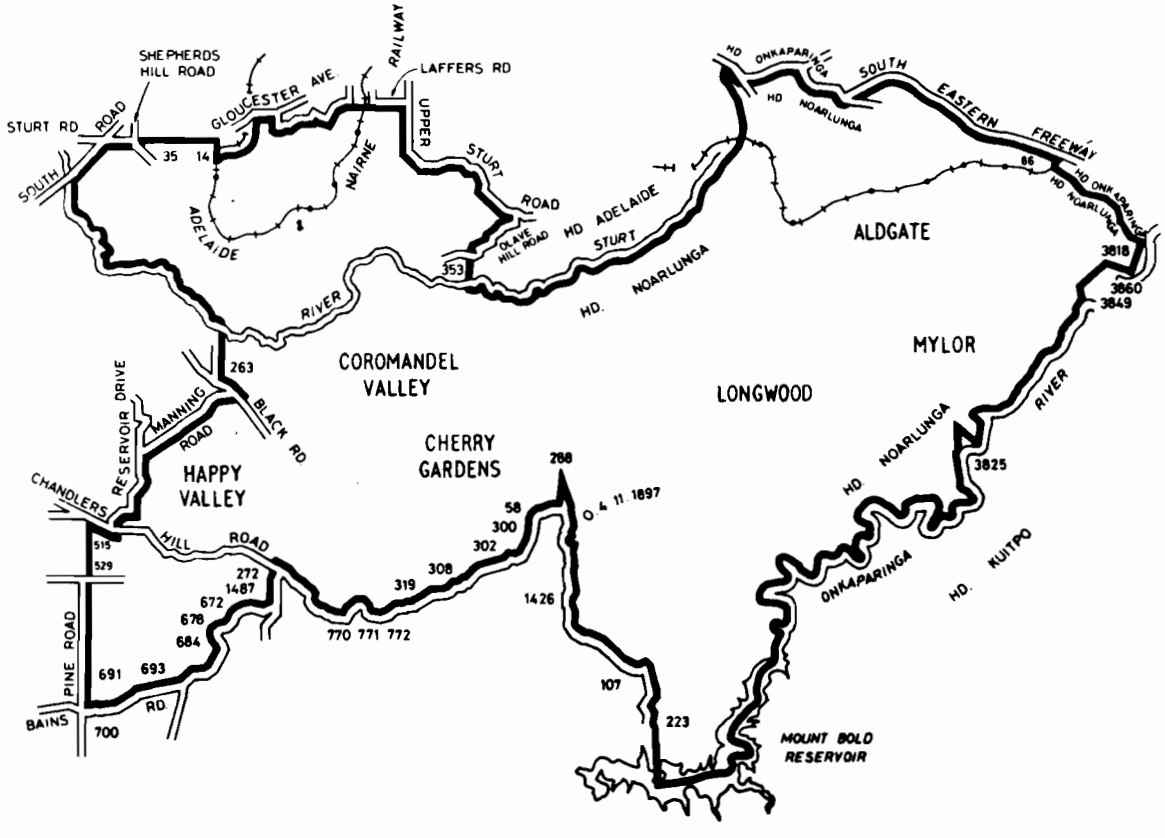


Exhibit "B" (Appellants)

Districts Electoral Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 413

DISTRICT.....FISHER

NUMBER OF ELECTORS:

FISHER EAST	5494
FISHER NORTH (Part)	6489
FISHER SOUTH	1489
FISHER WEST	3380
MITCHELL (Part)	546
	17398

Deviation from Quota:

+ 3.65 per cent

NOTES AS TO NAME:

Sir James Hurtle Fisher (1790-1875), was first Resident Commissioner, first Mayor of Adelaide, first Present of fully elected Legislative Council. Supported Colonel Light on site of Adelaide.

TECHNICAL DESCRIPTION:

Commencing at a point on the south boundary of the hundred of Noarlunga (River Onkaparinga), being its intersection with a straight line drawn from the north-east corner of section 4164, hundred of Kuitpo, to the southern corner of section 223, hundred of Noarlunga; thence northerly to the said southern corner of section 223; generally northerly, north-westerly and northerly along road west of said section, east and north of section 107, east of section 1426, along road opened 4th November, 1897, to the western road intersecting section 288; generally south-westerly and north-westerly following the road south of section 288, east of sections 58 and 300, south of sections 302, 308 and 319, intersecting sections 772 and 771 and the northern portion of section 770; along the Main Road to the north-eastern corner of section 272 (Chandler Hill); southerly and south-westerly along the road east of section 272, east and south of section 1487,

intersecting sections 672, 678, 684, 694, 693, 701 and 700 (Bains Road); north along road west of latter section and Pine Road, Happy Valley, and the western boundaries of sections 529 and 515; south-easterly along Chandlers Hill Road; generally north-easterly and northerly along Reservoir Drive; north-easterly along Manning Road, Flagstaff Hill; north-west along Black Road; north along road west of section 263 and along west boundary of section 895, hundreds of Adelaide and Noarlunga, to the River Sturt; generally north-westerly along River Sturt; north-easterly along Main South Road, Bedford Park; east and north along Sturt Road and Shepherds Hill Road; east along the north boundaries of sections 35 and 14, hundred of Adelaide (through Women's Memorial Playing Fields); south along the east boundary of section 14; easterly and northerly along Adelaide and Nairne railway; generally easterly along Gloucester Avenue, Grevillea Way, Gum Grove, Neate Avenue and Gratton Street, Blackwood, and Laffers Road, Glenalta; south and generally south-easterly along Upper Sturt Road; south-westerly along Olave Hill Road, Hawthorndene and road south-east of section 350; south along the east boundary of section 353; generally north-easterly and easterly along the south-eastern boundary of the hundred of Adelaide and the northern boundary of the hundred of Noarlunga to its intersection with the South Eastern Freeway; easterly along the said freeway to the north-eastern boundary of the hundred of Noarlunga (near section 86 of latter hundred); south-easterly along said hundred boundary; south-westerly along the western boundary of section 3818, hundreds of Noarlunga and Kuitpo; westerly along the northern boundary of sections 3860 and 3849, hundreds of Noarlunga and Kuitpo; south-westerly and southerly along north-western and western boundaries of latter section; generally south-westerly along the River Onkaparinga; north-west and south along north-east and west boundaries of section 3825, hundreds of Noarlunga and Kuitpo; thence generally south-westerly and westerly along the River Onkaparinga to the point of commencement.

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

p. 413

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

414 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

/August 5, 1976

DISTRICT.....BAUDIN 31

GENERAL DESCRIPTION:

This District comprises the Subdivision of Moana, together with the majority of the coastal area up to and including Hallett Cove, the eastern boundary being Brodie Road and a projection north to the eastern side of Hallett Cove.

The area south of Doctors Road, Spriggs Road and north of the Onkaparinga has been included.

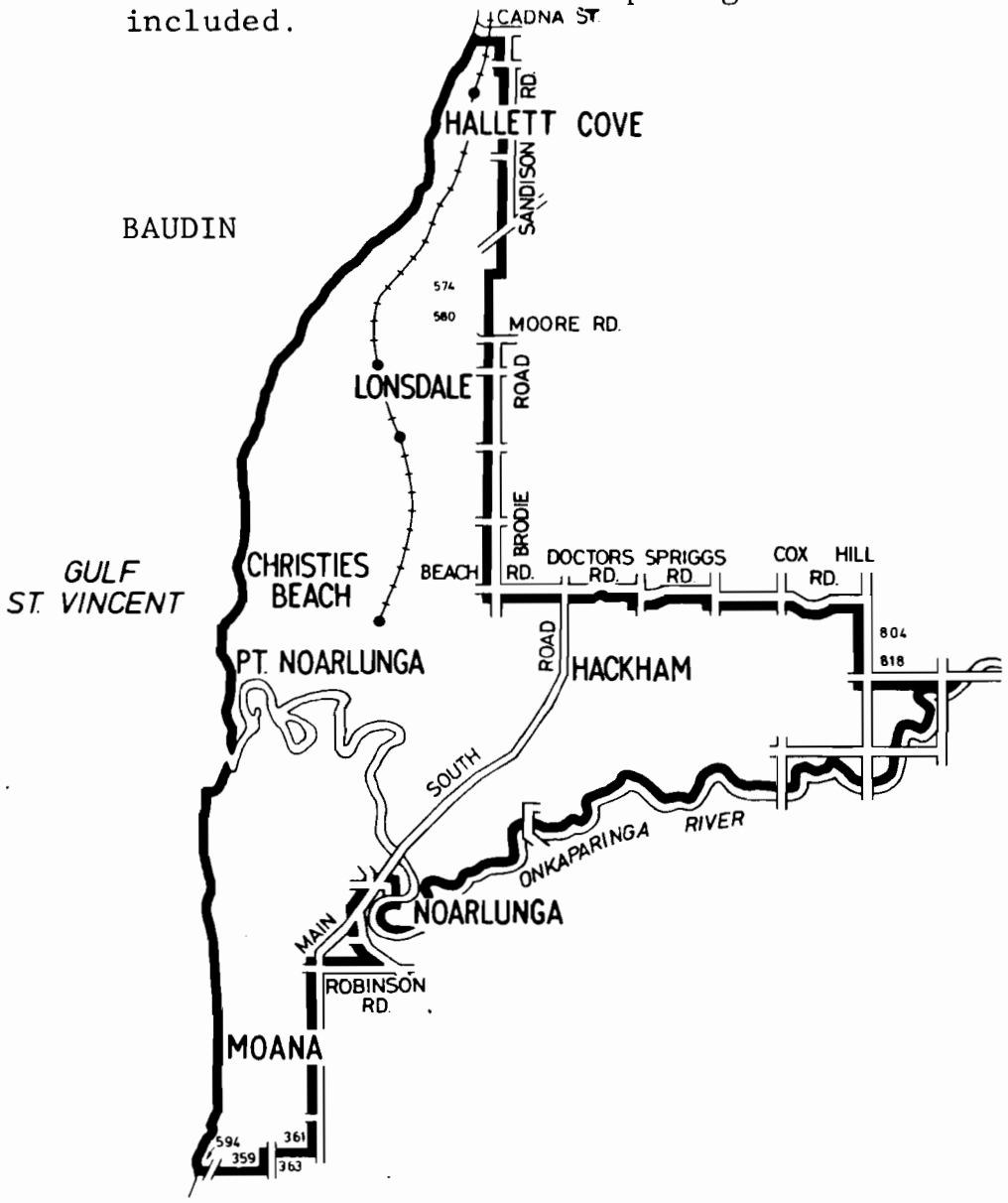


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 415

DISTRICT . . . . . BAUDIN 31

NUMBER OF ELECTORS:

MAWSON (Part B).	13 720
MOANA	2 803
	16 523

Deviation from Quota:
- 1.56 per cent

NOTES TO NAME:

Captain Nicolas Baudin (1756-1803), after an abortive voyage south in 1983 was commissioned by French authorities to lead a scientific expedition to Australia. During the voyage (1800-1803), he mapped much of the eastern coast of South Australia meeting at Encounter Bay on 8th April, 1802,' Captain Flinders who had approached from the west. At least 43 surviving coastal names in South Australia were given by Baudin or subsequently attributed by French authorities. He died on the way back to France.

(sources: Forewood by Dr. Jean-Paul Faivre to Baudin's Journal published 1974 by Libraries Board of South Australia.
"Questions Relating to Nicolas Baudin's Australian Expedition, 1800-1804" by Christine Cornell, B.A. (Hons.)).

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production north-westerly of Nungamoora Street, Hallett Cove; thence easterly along said production and street, and Cadna Street; southerly along Sandison Road and production to the southern boundary of section 505, hundred of Noarlunga; west along latter boundary; south along the east boundaries of sections 574 and 580 and Brodie Road; easterly along Beach Road, Doctors Road and Spriggs Road, Morphett Vale, road south of sections 728 and 729, Cox Hill Road and road north of section 803; south along road west of sections 804 and 818; easterly along the road south of sections 818 and 819 to the southern boundary of section 820; generally

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

south-westerly following the River Onkaparinga around the Town of Noarlunga to the road intersecting section 69, hundred of Willunga; northerly along latter road; westerly along road north of section 69 to the Main South Road; south-westerly along said main road; generally southerly along the Noarlunga and Victor Harbor Main Road to Robinson Road; westerly along Robinson Road; southerly along Main South Road to the south-eastern corner of section 361, hundred of Willunga; westerly along the southern boundaries of latter section and section 360; southerly along the western boundary of section 363; westerly along the southern boundaries of sections 359 and 594 and production to the sea coast; thence northerly and north-easterly following the sea coast to the point of commencement, together with jetties along the sea coast.

p. 415

Exhibit "B" (Appellants) Electoral District Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT . . . . . .MAWSON 32

GENERAL DESCRIPTION:

The District comprises Morphett Vale and the eastern part of the old Subdivision of Mawson. It extends south as far as Doctor's Road. The suburbs of Marion, Kingston Park and Seacliff are included, O'Halloran Hill and the southern part of the Subdivision of Flagstaff Hill have been included.

MAWSON

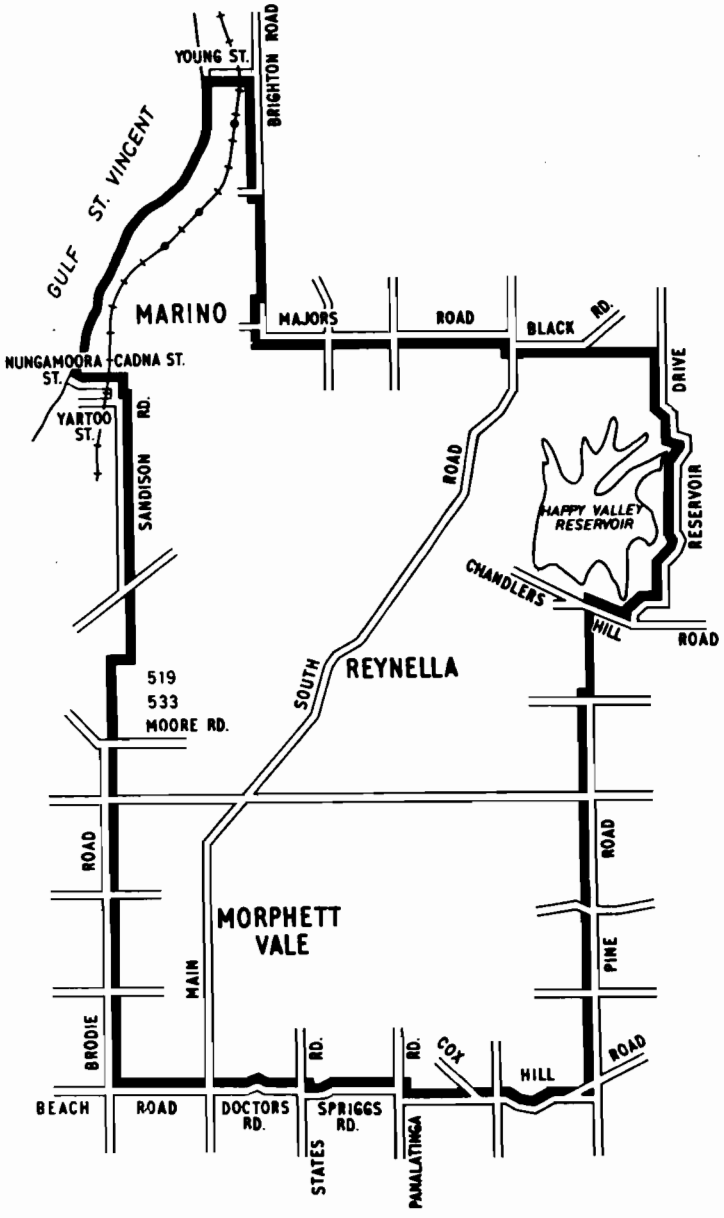


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 417

DISTRICT .. .. MAWSON 32

NUMBER OF ELECTORS:

FLAGSTAFF HILL (Part). ..	2 060
MAWSON (Part)	14 459
	16 519

Deviation from Ouota:
-1.58 per cent

NOTES AS TO NAME:

Sir Douglas Mawson, O.B.E., F.R.S., D.Sc., B.E., was for sixteen years a lecturer in and later Professor of Geology (1921-1952) at the University of Adelaide. He was a member of Shackleton's Antartic Expedition in 1908 and led Antartic Expeditions in 1911-1914 and 1929-1931. His work was world famous.

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production north-westerly of Nungamoora Street, Hallett Cove; thence easterly along said production and street, and Cadna Street; southerly along Sandison Road, and production to the southern boundary of section 505, hundred of Noarlunga; west along latter boundary; south along the west boundaries of sections 519 and 533 and Brodie Road; easterly along Beach Road, Doctors Road and Spriggs Road, Morphett Vale; road south of sections 728 and 729, hundred of Noarlunga, Cox Hill Road and road north of section 803; north along road east of sections 731 and 709, Pine Road, Happy Valley, and the western boundaries of sections 529 and 515; south-easterly along Chandlers Hill Road; generally north-easterly and northerly along Reservoir Drive to the production easterly of the road north of section 74 (Black Road, Flagstaff Hill); east along latter production and road; north along Main South Road; West along Majors Road, O'Halloran Hill and Sheidow Park; north along the west boundaries of sections 195, 196 and 197 and along Brighton Road, Seacliff; west along Young Street and production to the sea coast; thence south-westerly following the east coast to the point of commencement, together with jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. BRIGHTON 33

GENERAL DESCRIPTION:

This District comprises that part of the old District of Brighton east of the boundary of the Corporation of the City of Brighton to which has been added the suburb of Seacliff Park and part of the Subdivision of Flagstaff
10 Hill north of Black Road and east of Reservoir Drive.

The portion of the suburb of South Brighton north of Seacombe Road to Broadway and east of Brighton Road is included in this District.

BRIGHTON

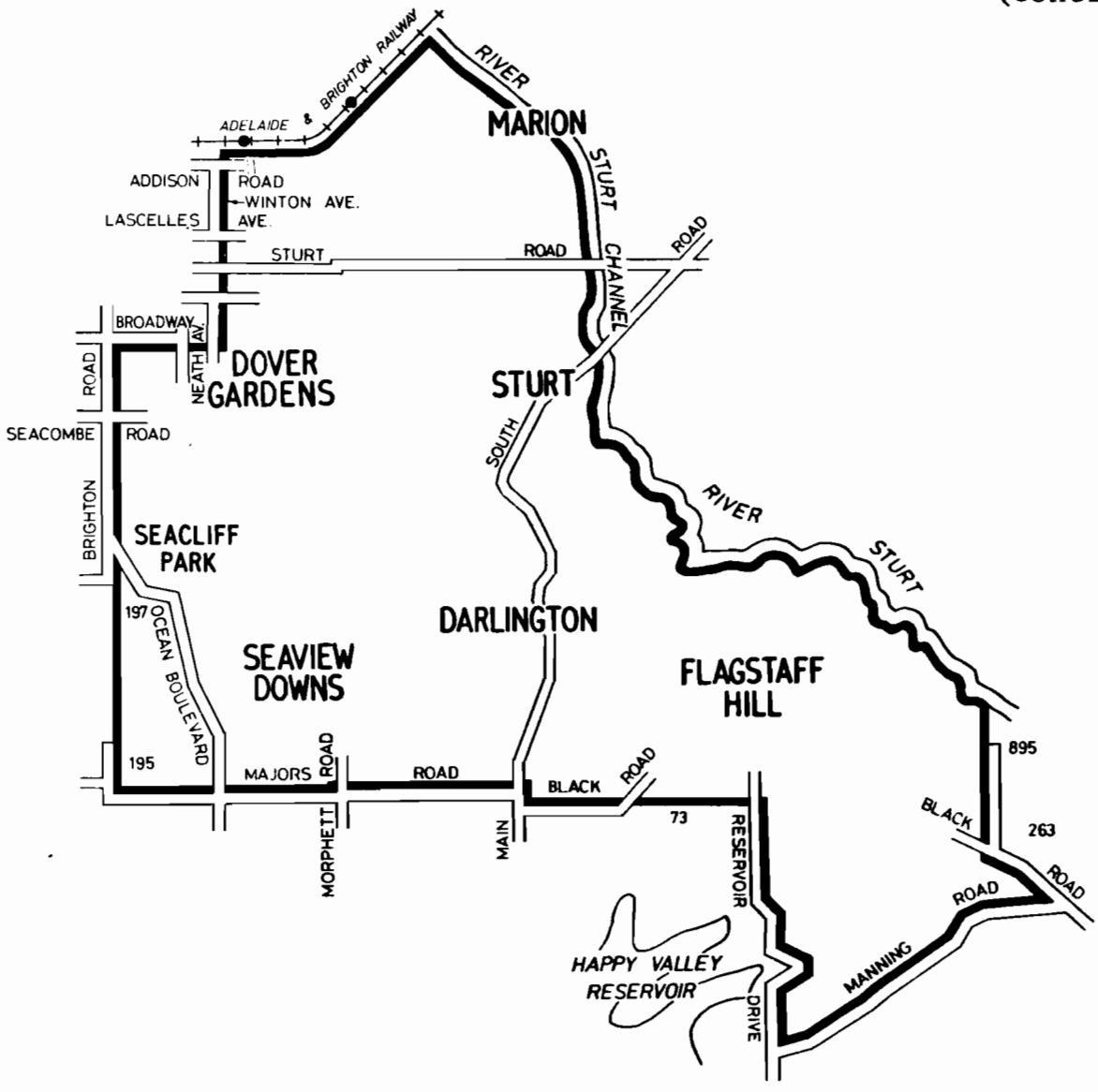


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 419

DISTRICT .. .. BRIGHTON 33

NUMBER OF ELECTORS:

BRIGHTON (Part)	13 982
FLAGSTAFF HILL (Part)	2 052
MAWSON (Part)	1 509
	17 543

Deviation from Quota:
+ 4.52 per cent

NOTES AS TO NAME:

It was laid out in 1840 by Mathew Smith and named Brighton after Brighton in England.

TECHNICAL DESCRIPTION:

Commencing at the intersection of the River Sturt Channel and the Adelaide and Brighton railway, Oaklands Park; thence generally south-easterly following said channel and River Sturt to the western boundary of Section 895, hundred of Noarlunga; south along said boundary and road west of section 263; south-easterly along Black Road; south-westerly along Manning Road, Flagstaff Hill; generally northerly along Reservoir Drive to the production easterly of the road north of section 74 (Black Road, Flagstaff Hill); east along latter production and road; north along Main South Road; west along Majors Road, Darlington and Seacliff Park ; north along the west boundaries of sections 195, 196 and 197 and along Brighton Road; east along Broadway and production to Neath Avenue, South Brighton; north along Neath Avenue, the eastern boundaries of sections 204, 205 and 206, and Winton Avenue, Hove to the Adelaide and Brighton railway; thence east and north-east along said railway to the point of commencement.

DISTRICT . . . . . MITCHELL 34

GENERAL DESCRIPTION:

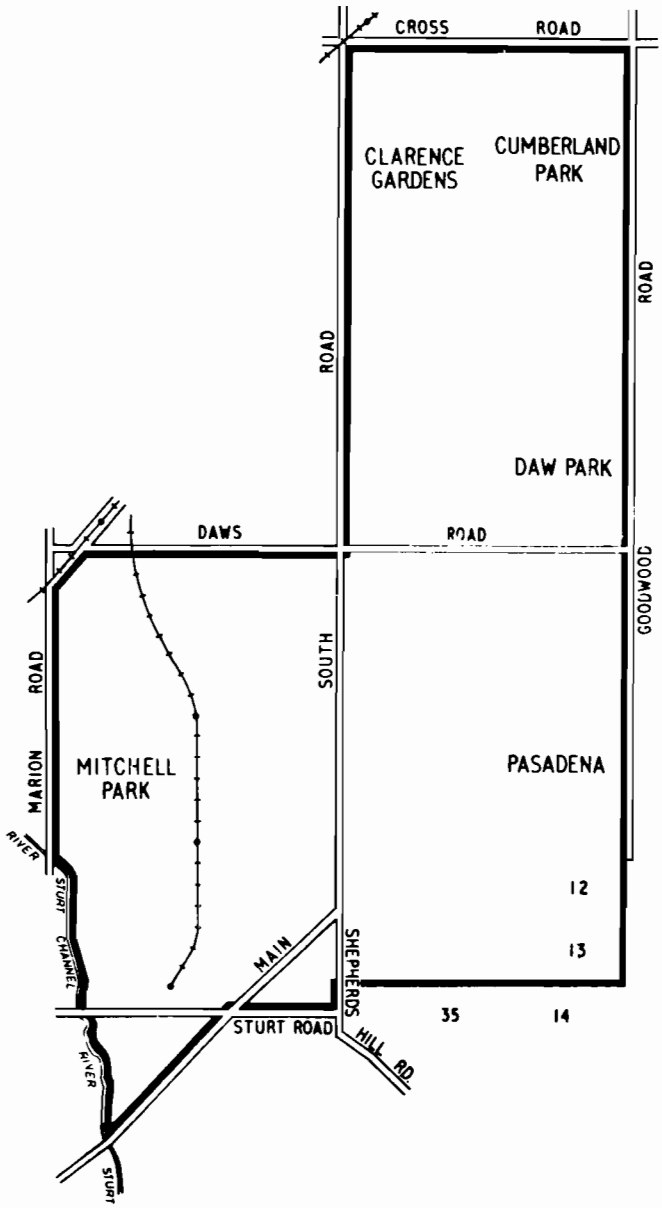
This District comprises the old District of Mitchell, from which the area south of South Road and Sturt Road has been excluded.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

MITCHELL



DISTRICT .. .. MITCHELL 34

NUMBER OF ELECTORS:
MITCHELL (Part).. .. .. 17 467

Deviation from Ouota:
+ 4.06 per cent

NOTES AS TO NAME:

Sir William Mitchell, K.C.M.G., M.A., D.Sc., Litt.D. (1861-1962), Vice Chancellor of the University of Adelaide, 1916-1942, Chancellor from 1942-1948. Professor of English Language, Literature and Mental and Moral Philosophy, 1894-1922. He is survivied by his son, Sir Mark Mitchell, Kt., M.Sc.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Main South Road with the River Sturt, Bedford Park; thence north-easterly along Main South Road; east and north along Sturt Road and Shepherds Hill Road; east along the north boundaries of sections 35 and 14, hundred of Adelaide (through Women's Memorial Playing Fields); north along the east boundaries of sections 13 and 12, and Goodwood Road, Pasadena, Daw Park and Cumberland Park; west along Cross Road; south along Main South Road, Clarence Gardens; west along Daws Road, Mitchell Park; south-west along Adelaide Brighton railway; south along Marion Road; thence generally southerly along River Sturt channel and River Sturt to the point of commencement.

422 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE
/August 5, 1976

DISTRICT . . . . . GLENELG 33

GENERAL DESCRIPTION:

This District comprises the old District of Glenelg, less Glenelg East and Glengowrie, Morphettville and Oaklands Park.

It has been extended southerly to include the suburbs of North Brighton, Hove and Brighton and part of South Brighton, west of Brighton Road.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

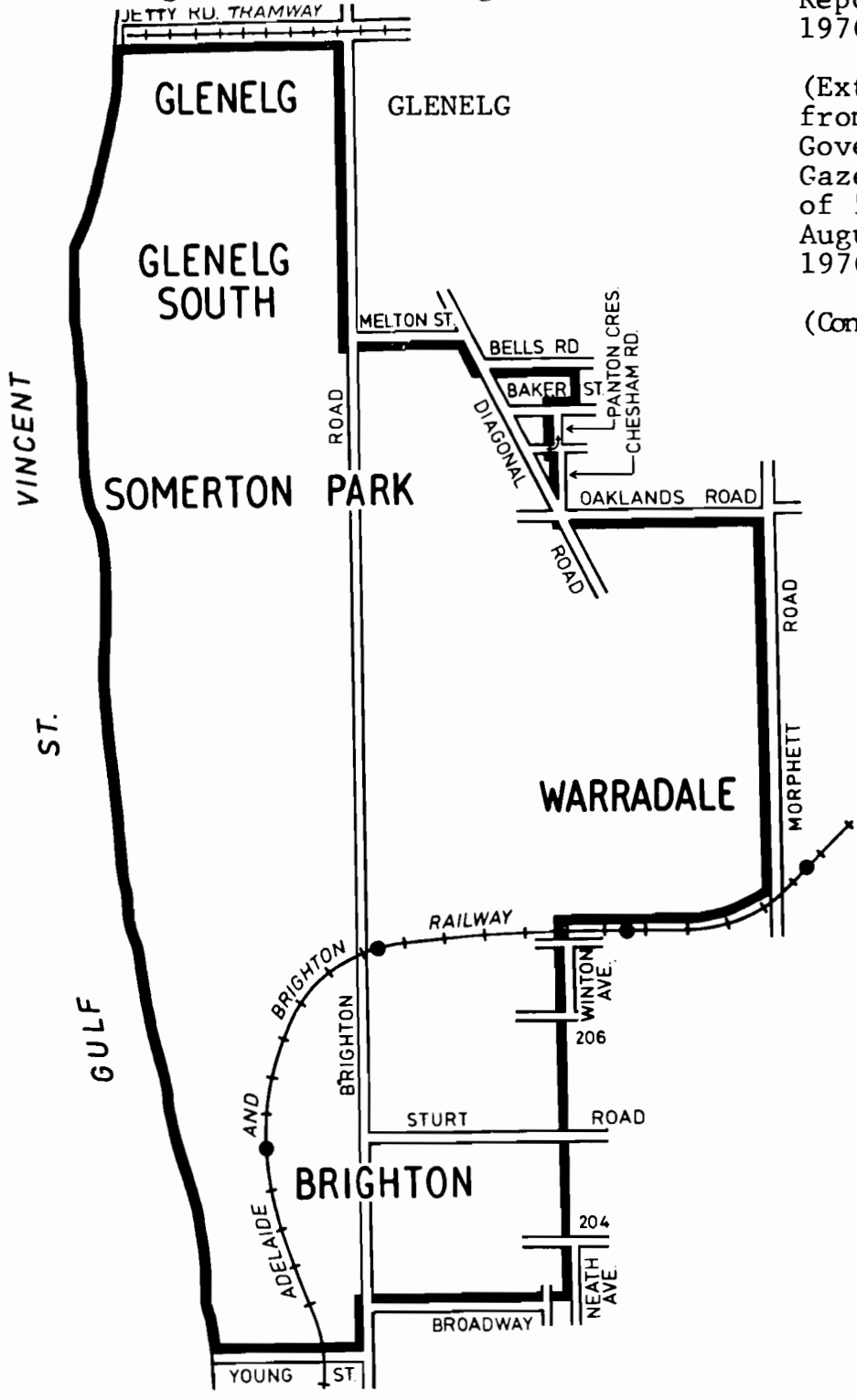


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 423

DISTRICT .. .. GLENELG 35

NUMBER OF ELECTORS:

BRIGHTON (Part). ..	6 247
GLENELG (Part).. ..	11 272
	17 519

Deviation from Quota:
+4.37 per cent

NOTES AS TO NAME:

Named by Governor Hindmarsh after Lord Glenelg, Secretary of State for the Colonies in 1839.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Morphett Road, Warradale and Adelaide and Brighton railway; thence north along Morphett Road; west along Oaklands Road; north along Chesham Road and Panton Crescent, Glengowrie; east along Barker Street; north along the east boundaries of allotments 357, 356, 325 and 324 of Lands Titles Registration Office Plan No. 3414; west along Bells Road; north-west along Diagonal Road; west along Melton Street, Somerton Park; north along Brighton Road to the Adelaide and Glenelg tramway; west along said tramway and production to the sea coast; generally southerly following the sea coast to the production westerly of Young Street, South Brighton; east along said production and Young Street; north along Brighton Road; east along Broadway and production to Neath Avenue; north along Neath Avenue, the eastern boundaries of sections 204, 205 and 206, hundred of Noarlunga and Winton Avenue, Hove to the Adelaide and Brighton railway; thence east and north-east along said railway to the point of commencement, together with jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. ASCOT PARK 36

GENERAL DESCRIPTION:

This District is identical with the existing District of Ascot Park.

ASCOT PARK

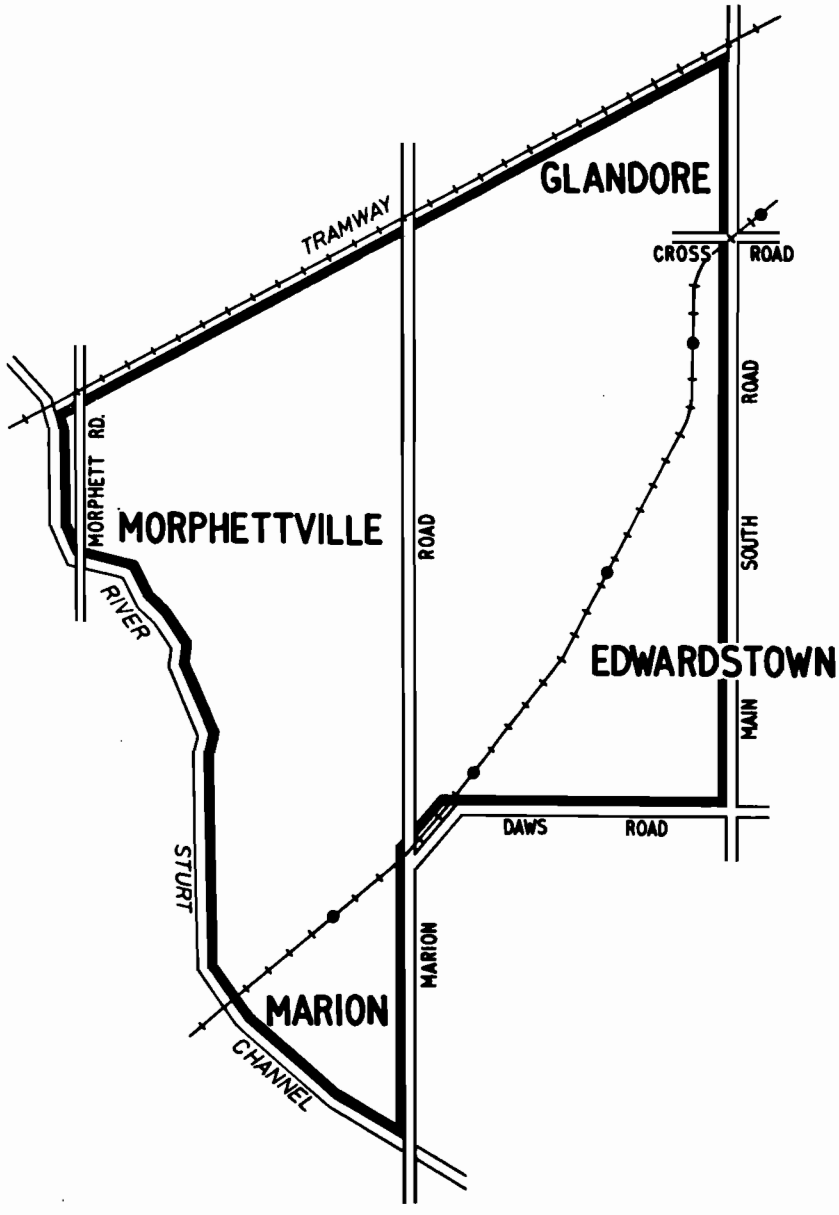


Exhibit "B" (Appellants) Electoral Districts Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 425

DISTRICT .. .. ASCOT PARK 36

NUMBER OF ELECTORS:
ASCOT PARK 16 973

Deviation from Quota:
+ 1.12 per cent

NOTES AS TO NAME:
The area was named after an English racecourse.

TECHNICAL DESCRIPTION:

Commencing at the intersection of the Adelaide and Glenelg tramway with Main South Road, Glandore; thence southerly along said Main Road; westerly along Daws Road, Ascot Park; south-westerly along Adelaide and Brighton railway; southerly along Marion Road; generally north-westerly along River Sturt; thence north-easterly along Adelaide and Glenelg tramway to the point of commencement.

426 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

DISTRICT . . . . . MORPHETT 37

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Hanson South, the suburbs of Camden Park, Glenelg East, Glengowrie, the area of Morphetville west of the Sturt Creek, together with part of Oaklands Park lying west of the Sturt Creek and north of the Brighton railway line.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

MORPHETT

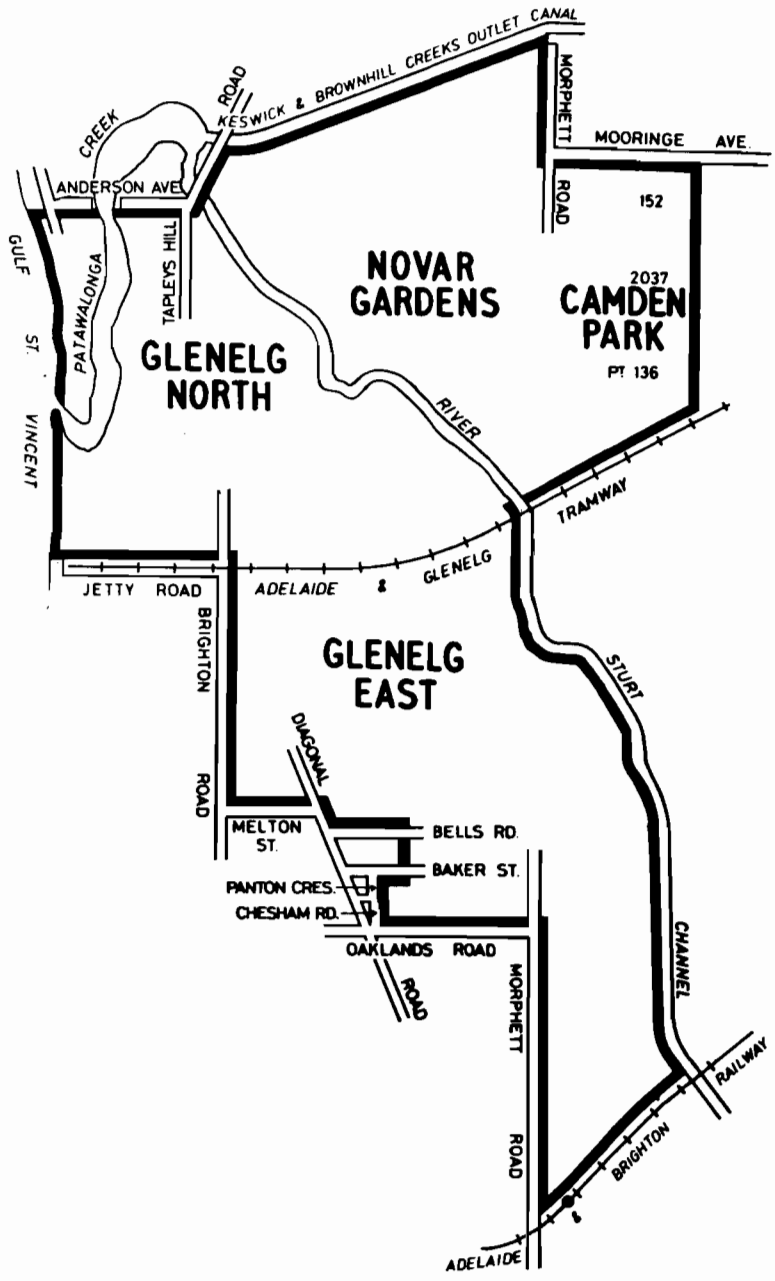


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 427

DISTRICT .. .. MORPHETT 37

NUMBER OF ELECTORS:

GLENELG (Part	7 301
HANSON EAST (Part)	2 160
HANSON SOUTH	8 119
	17 580

Deviation from Quota:
+ 4.74 per cent

NOTES AS TO NAME:

Sir John Morphett (1809-1892), arrived in South Australia on 11th September, 1836. He held many official and non-official positions in the Province, including that of Speaker of the enlarged Legislative Council (1851). He was President of the elected Legislative Council from 1865 to 1873. He and his direct descendants lived in a house built by him at Morphettville from 1854 to 1976.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Morphett Road and Mooringe Avenue, Camden Park; thence east along Mooringe Avenue; south along the western boundaries of Streeters Road, Plympton and sections 104 and 109, hundred of Adelaide and Paget Street to the Adelaide and Glenelg tramway; south-west along said tramway to the River Sturt channel; generally southerly along the River Sturt channel to the Adelaide and Brighton railway; south-westerly along said railway to Morphett Road, Oaklands Park, north along Morphett Road; west along Oaklands Road; north along Chesham Road and Panton Crescent, Glengowrie; east along Baker Street; north along the east boundaries of allotments 357, 356, 325 and 324 of Lands Titles Registration Office Plan No. 3414; west along Bells Road; north-west along Diagonal Road; west along Melton Street, Glenelg East; north along Brighton Road to the Adelaide and Glenelg tramway; west along said tramway and production to the sea coast; north along the sea coast to the production westerly of Anderson Avenue, Glenelg North; east along said production and Anderson Avenue; north-east along Tapleys Hill Road to the Keswick and Brownhill Creeks outlet canal; north-easterly along said canal to the intersection with the production northerly of Morphett Road; thence south along said production and Morphett Road, Novar Gardens to the point of commencement, together with jetties along the sea coast.

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Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

DISTRICT .. .. HANSON 38

GENERAL DESCRIPTION:

This District comprises the old Sub-divisions of Hanson North and Hanson East, less the suburb of Camden Park. The area has been extended in a northerly direction to include the suburbs of Lockleys, Henley Beach South and the part of the suburb of Fulham that lies in the Corporation of the City of West Torrens.

(Extract from Government Gazette of 5th August 1976)

(Continued)

HANSON

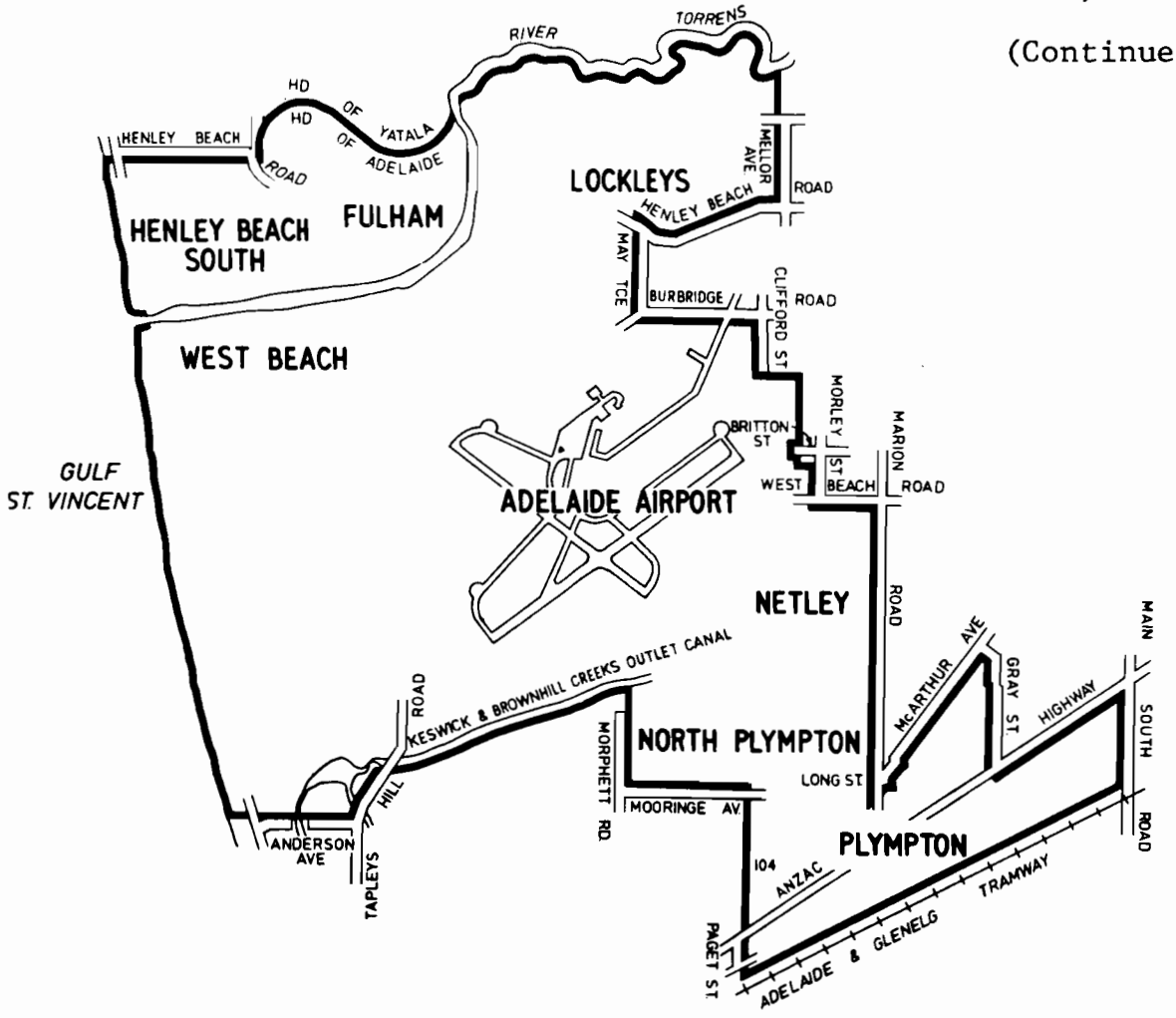


Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

August 5, 1976/ THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 429

DISTRICT.....HANSON

NUMBER OF ELECTORS:

HANSON EAST (Part)	6402
HANSON NORTH	3245
HENLEY BEACH (Part)	4006
PEAKE (Part)	4063
	17716

Deviation from Quota:

+ 5.55 per cent

NOTES AS TO NAME:

Sir Richard Davies Hanson (1805-1876) associated with Wakefield when South Australia was being planned. Accompanied Wakefield to Canada on the Durham Commission, also accompanied him to New Zealand. Afterwards came to South Australia and became Premier and later Chief Justice.

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production westerly of Anderson Avenue, Glenelg North; thence east along said production and avenue; north-east along Tapleys Hill Road to the Keswick and Brownhill Creeks outlet canal; north-easterly along said canal to the intersection with the production northerly of Morphett Road, North Plympton; south along said production and road; east along Mooringe Avenue; south along the western boundaries of Streeters Road, Plympton and sections 104 and 109, hundred of Adelaide and Paget Street to the Adelaide and Glenelg tramway; north-easterly following said tramway; north along Main South Road; south-west along Anzac Highway, Glandore; north along Gray Street, Plympton; south-west along McArthur Avenue, west and south-west along Long Street; north along Marion Road, North Plympton; west along West Beach Road to the south-western corner of Morley Street, West Richmond; generally northerly, westerly

and northerly along eastern and northern boundaries of Adelaide Airport and the western boundary of Clifford Street, Brooklyn Park; west along Burbridge Road; north along May Terrace; south-easterly and north-easterly along Henley Beach Road; north along Mellor Avenue, Underdale and production to the River Torrens; generally westerly along said River Torrens and the southern boundary of the hundred of Yatala to Henley Beach Road, Henley Beach; west along latter road and production to the sea coast; thence generally southerly following the sea coast to the point of commencement.

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

p. 429

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

430 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

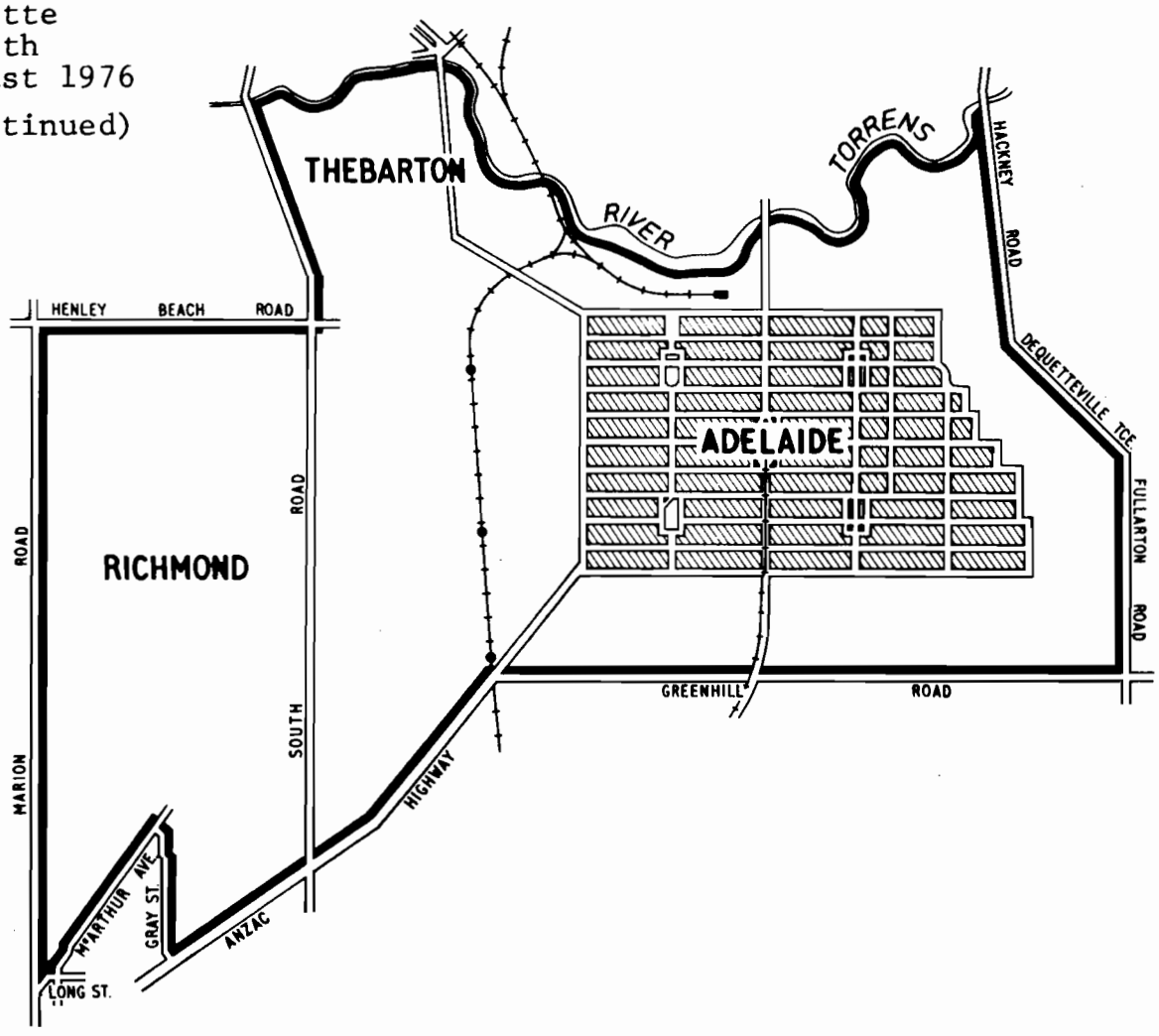
/August 5, 1976

DISTRICT.....ADELAIDE 39

GENERAL DESCRIPTION:

This District is identical with the existing District of Adelaide.

ADELAIDE



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 431

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT . . . . . ADELAIDE 39

NUMBER OF ELECTORS:

ADELAIDE.	3 421
MARLESTON.	4 915
THEBARTON.	9 186
	17 522

Deviation from Quota:
+ 4.39 per cent

NOTES AS TO NAME:
Named by Royal Command after Adelaide, Queen Consort of King William IV.

TECHNICAL DESCRIPTION:
Commencing at the intersection of the South Road with the River Torrens, Thebarton; thence generally easterly, south-easterly and north-easterly following the River Torrens to Hackney Road, Hackney; generally southerly following the eastern boundaries of the City of Adelaide to its south-east corner; west along the south boundary of the said city; south-west along Anzac Highway, Keswick; north along Gray Street, Plympton; south-west along McArthur Avenue; west and south-west along Long Street; north along Marion Road, Richmond and Cowandilla; east along Henley Beach Road; thence north and north-west along South Road, Thebarton, to the point of commencement.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

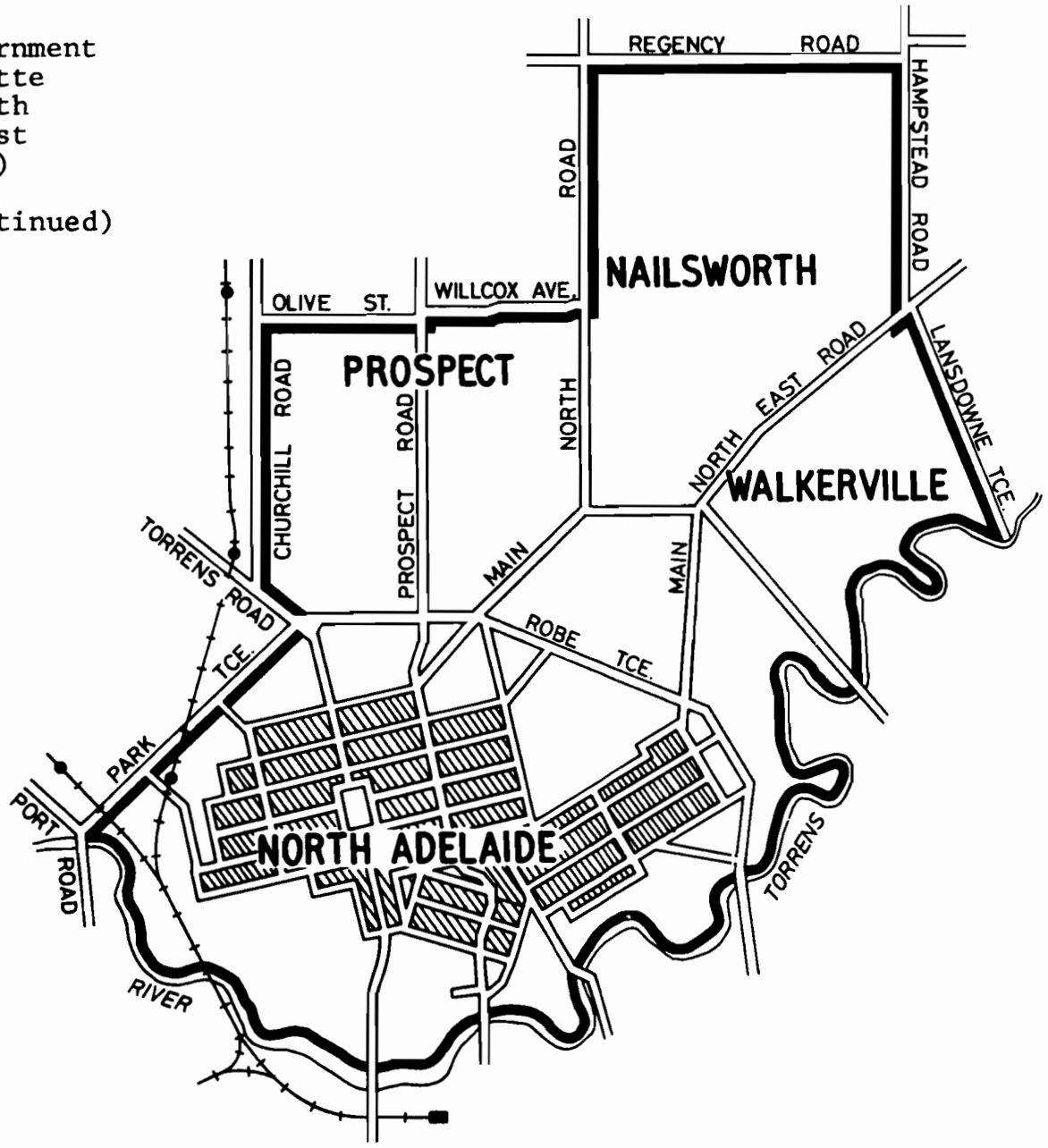
(Continued)

DISTRICT .. .. TORRENS 40

GENERAL DESCRIPTION:

This District is identical with the existing District of Torrens.

TORRENS



August 5, 1976/ THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 433

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

DISTRICT.....TORRENS

NUMBER OF ELECTORS:

TORRENS.....17497

Deviation from Quota:

+ 4.24 per cent

NOTES AS TO NAME:

The River Torrens was named after Colonel Robert Torrens, Chairman of the Board of Colonisation Commissioners appointed by the British Government to superintend the founding of the province.

His son, Sir Robert Richard Torrens, G.C.M.G., was Treasurer in the first Ministry and for a short time Premier. He is chiefly remembered as father of the Real Property Act.

TECHNICAL DESCRIPTION:

Commencing at the intersection of the River Torrens with Lansdowne Terrace, Vale Park; thence generally south-westerly, westerly and north-westerly following the River Torrens to Port Road, Bowden; north-east along Park Terrace; north-west along Torrens Road; north along Churchill Road, Prospect; east along Olive Street and Willcox Avenue; north along Main North Road; east along Regency Road, Sefton Park; south along Hampstead Road, Manningham; north-east along Main North East Road; thence south-east along Lansdowne Terrace to the point of commencement.

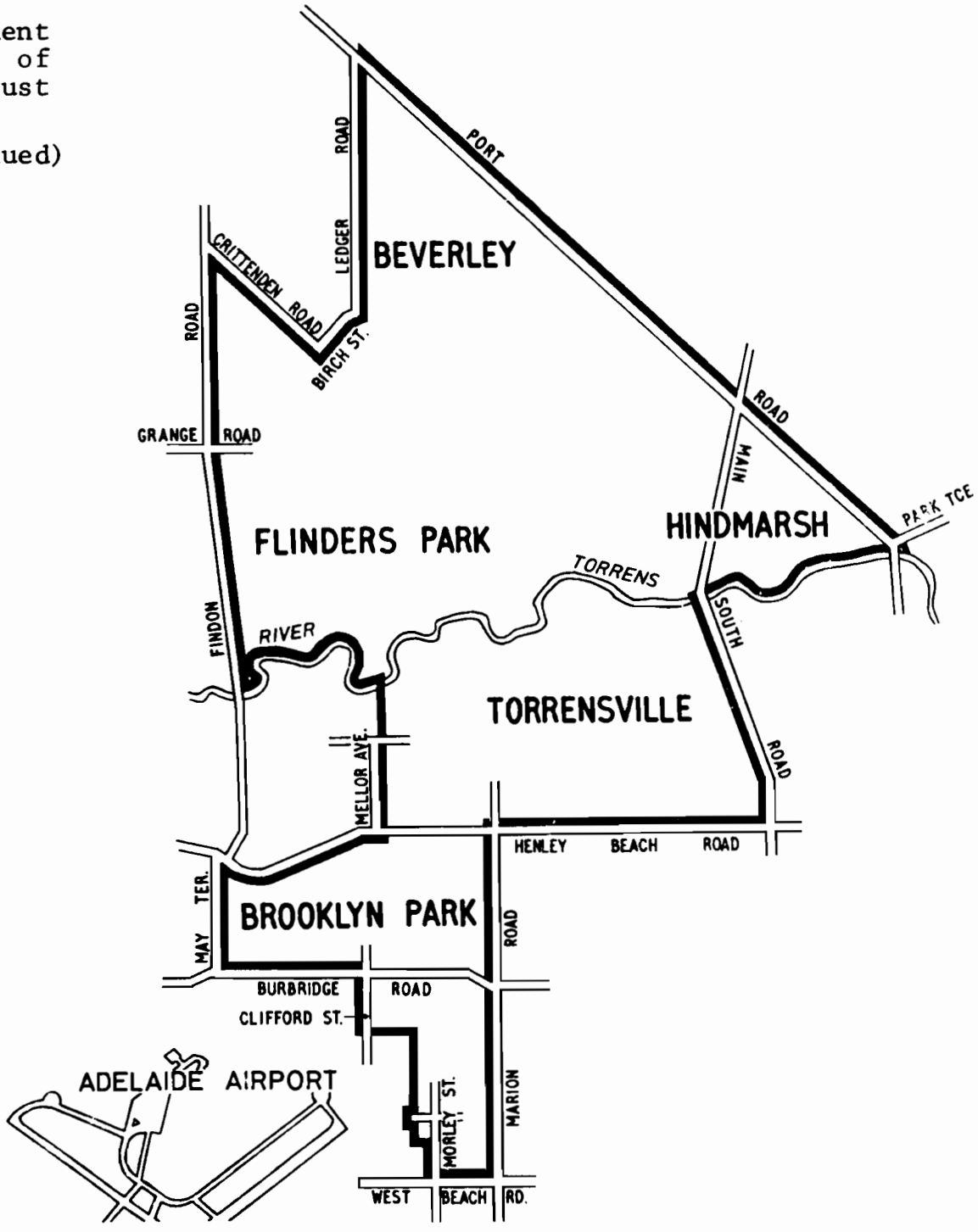
Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

DISTRICT.....PEAKE 41

GENERAL DESCRIPTION:

This District comprises the old Subdivision of Peake, less the suburb of Lockleys.

PEAKE



August 5, 1976 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 435

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. PEAKE 41

NUMBER OF ELECTORS:
BEVERLEY 3 830
PEAKE (Part). 13 302

Deviation from Quota:
+ 2.07 per cent

NOTES AS TO NAME:

Archibald Henry Peake (1859-1920), became Attorney-General and Treasurer for South Australia in 1905. Subsequently he was Premier in several Ministries. He was, for a time, Commissioner of Lands.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Findon Road with River Torrens, Flinders Park; thence northerly along Findon Road; south-easterly along Crittenden Road, Findon; north-easterly along Birch Street; northerly along Ledger Road, Beverley, to the north-east side of Port Road; south-east along said side of road to Park Terrace, Bowden; southerly to the River Torrens; generally westerly along said river; south-east and south along Main South Road, Torrensville; west along Henley Beach Road; south along Marion Road, Brooklyn Park; west along West Beach Road to the south-western corner of Morley Street, West Richmond; generally northerly, westerly and northerly along eastern and northern boundaries of Adelaide Airport and the western boundary of Clifford Street, Brooklyn Park; west along Burbridge Road; north along May Terrace; south-easterly and north-easterly along Henley Beach Road; north along Mellor Avenue, Underdale and production to the River Torrens; thence generally westerly along said river to the point of commencement.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

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DISTRICT .. .. HENLEY BEACH 42

GENERAL DESCRIPTION:

This District comprises the old District of Henley Beach, less the suburbs of Henley Beach South and that part of the suburb of Fulham that lies in the Corporation of the City of West Torrens. A small area to the north to include the whole of the suburb of Grange has been included.

(Continued)

HENLEY BEACH

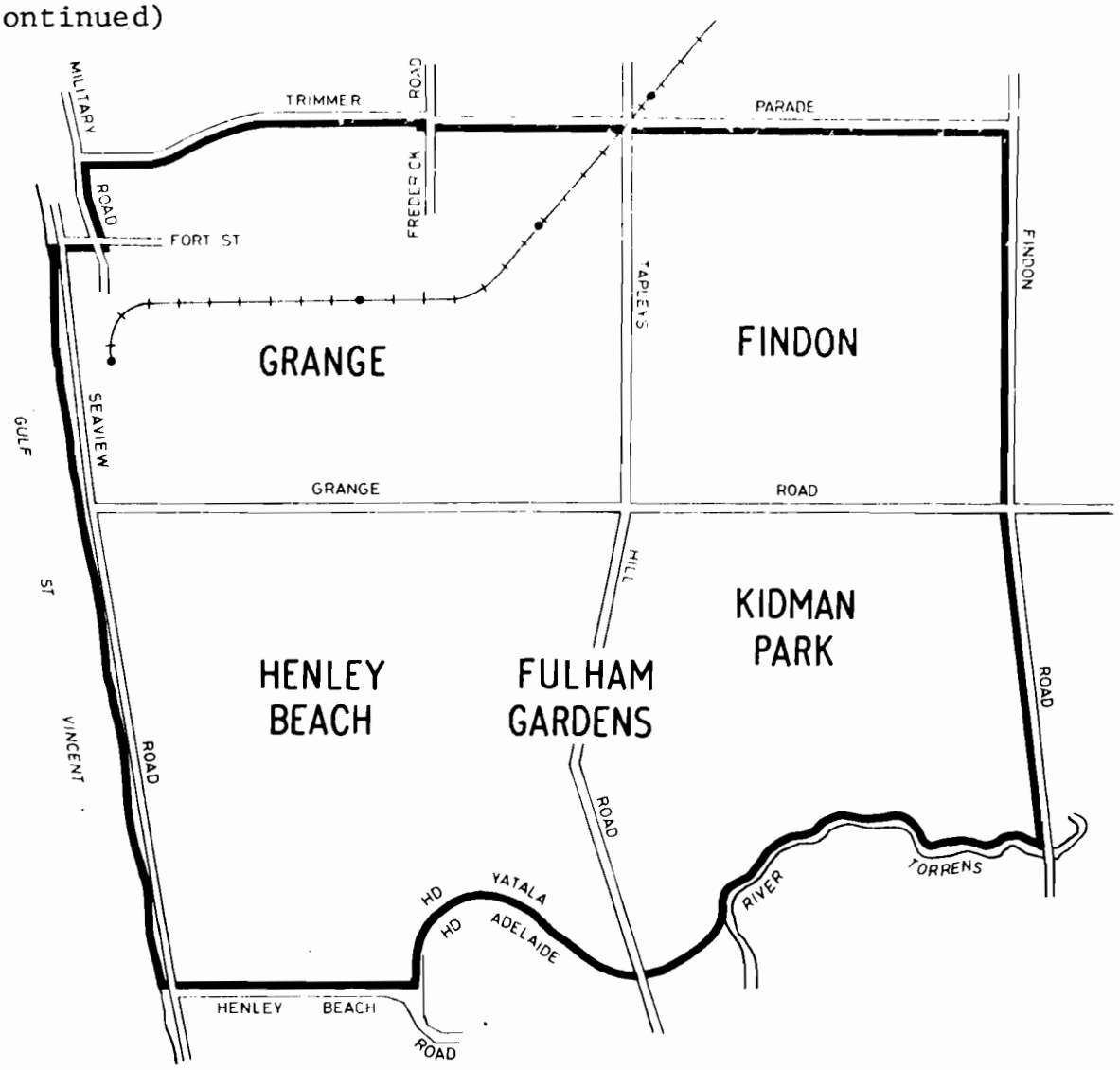


Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

DISTRICT .. .. HENLEY BEACH 42

NUMBER OF ELECTORS:

ALBERT PARK (Part).. ..	365
HENLEY BEACH (Part). ..	17 107
	17 472

Deviation from Quote:
+4.09 per cent

NOTES AS TO NAME:

So named presumably after Henley-on-Thames in the United Kingdom, by the syndicate which subdivided the land.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Findon Road with River Torrens, Kidman Park; thence generally westerly along said River Torrens and the southern boundary of the hundred of Yatala to Henley Beach Road, Henley Beach; west along latter road and production to the sea coast; northerly following the sea coast to the production westerly of Fort Street, Grange; east along said production and street; north along Military Road; generally easterly along Trimmer Parade, Grange and Seaton; thence southerly along Findon Road, Findon to the point of commencement, together with jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

438 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE /August 5, 1976

DISTRICT .. .. SPENCE 43

GENERAL DESCRIPTION:

The District comprises the existing District of Spence, excepting that the portion of the Suburbs of Mansfield Park and Angle Park which was in Spence North has now been excluded.

SPENCE

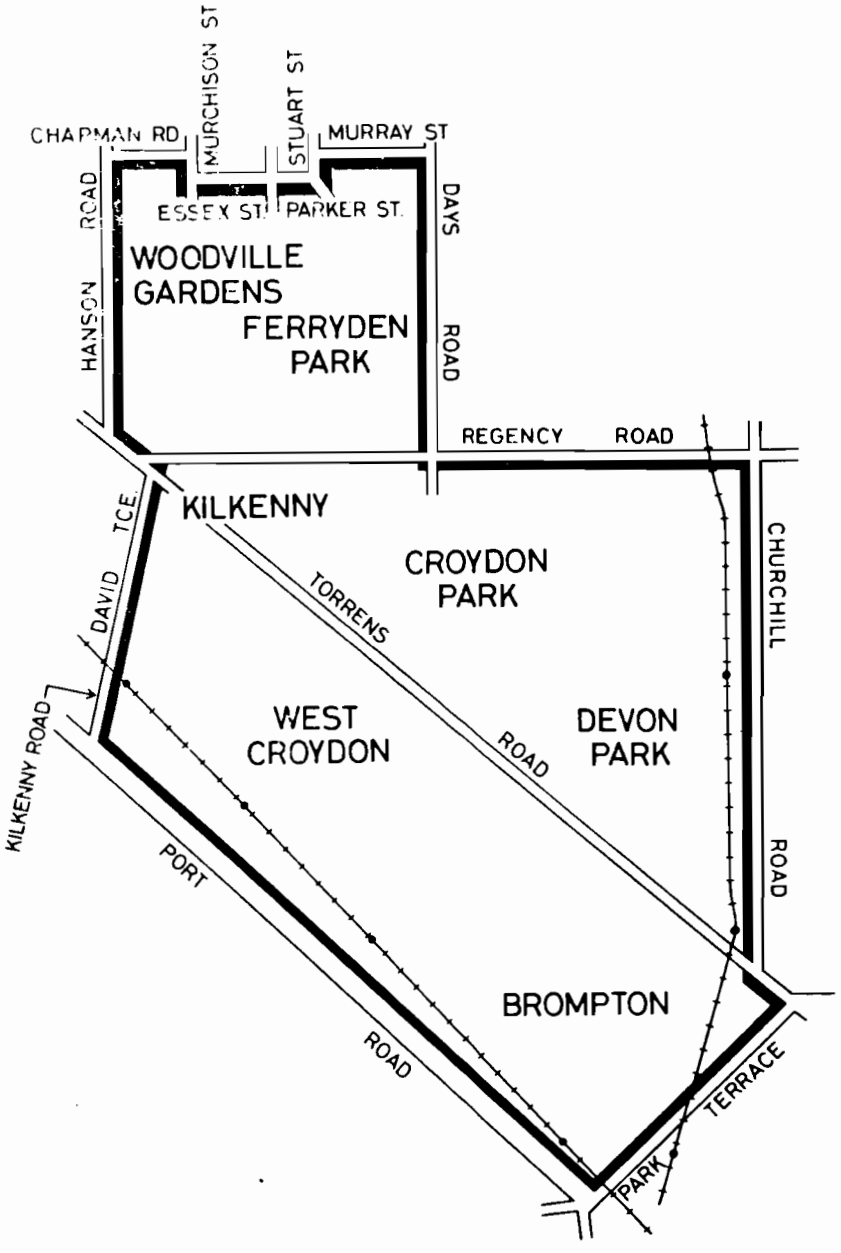


Exhibit "B"
(Appellants)
Districts Electoral Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976)
(continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 439

DISTRICT.....SPENCE 43

NUMBER OF ELECTORS:

SPENCE NORTH(Part).....	6696
SPENCE SOUTH.....	9722
	16418

Deviation from Quota:

-2.19 per cent

NOTES AS TO NAME:

Catherine Helen Spence (1825-1910), made her home in Adelaide for 70 years. She was a novelist, journalist, and advocate for proportional representation.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Kilkenny Road and the north-eastern side of Port Road, Kilkenny; thence north along Kilkenny Road and David Terrace; north-west along Torrens Road, Woodville Gardens; north along Hanson Road; east along Chapman Road, Essex Street, Parker Street and Murray Street to Days Road, Ferryden Park; south along Days Road; east along Regency Road, Croydon Park; south along Churchill Road, Prospect; south-east along Torrens Road, Bowden; south-west along Park Terrace; thence north-westerly along the north-eastern side of Port Road to the point of commencement.

Exhibit "B" 440 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

(Appellants) August 5, 1976

Districts Electoral Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

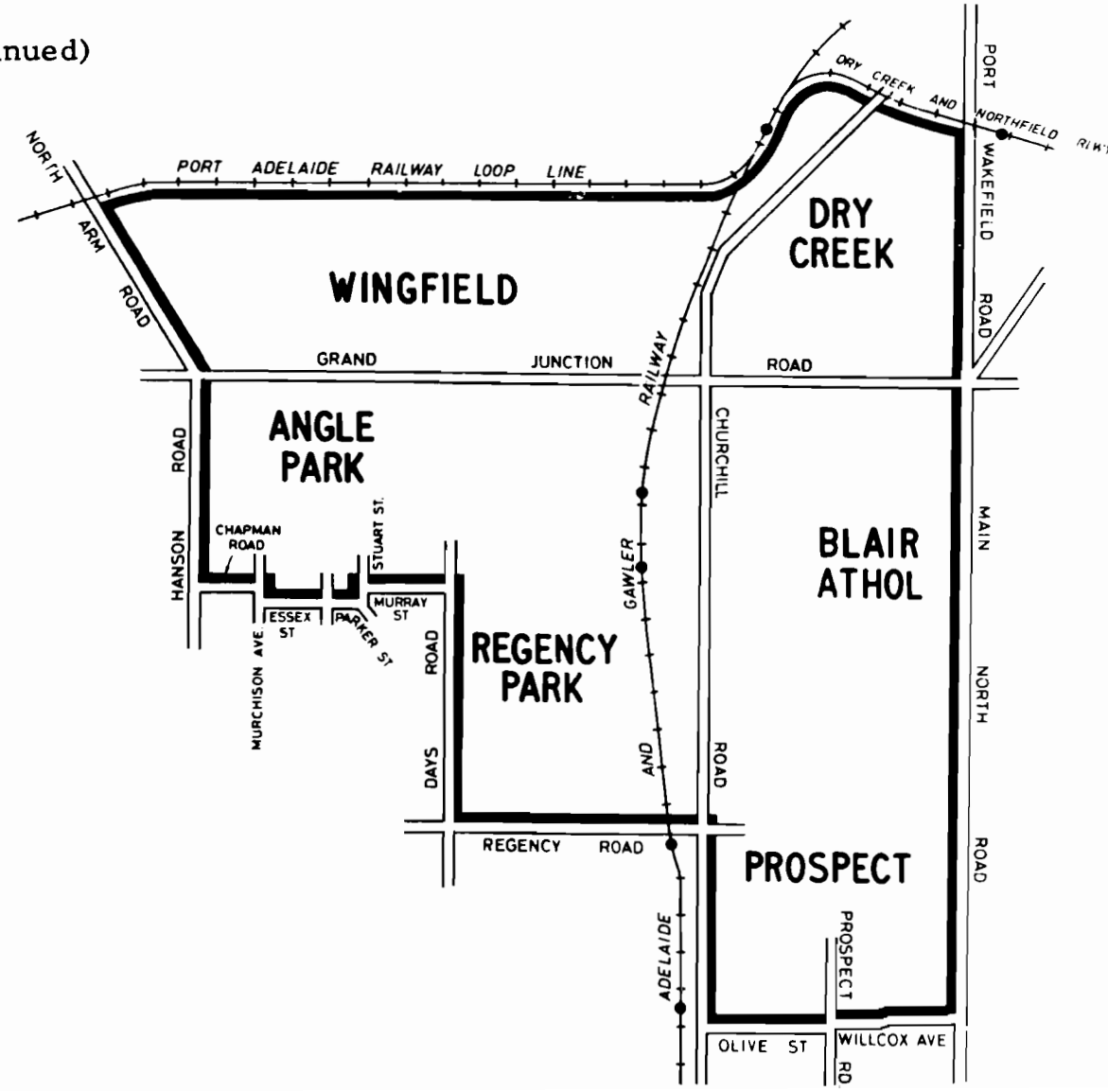
(continued)

DISTRICT.....ROSS SMITH 44

GENERAL DESCRIPTION:

The District comprises the existing District of Ross Smith to which has been added that part of the suburbs of Mansfield Park and Angle Park that was in the district of Spence.

ROSS SMITH



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 441

Exhibit "B" (Appellants)

44

Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....ROSS SMITH

NUMBER OF ELECTORS:

ANGLE PARK	4183
ROSS SMITH	12708
SPENCE NORTH (Part)	139
	17030

Deviation from Quota:

+ 1.46 per cent

NOTES AS TO NAME:

Sir Ross MacPherson Smith (1892-1922). Served with Australian Light Horse at Gallipoli and Sinai. Learned to fly in Egypt in 1916 and spent next two years in Royal Australian Flying Corps, Palestine. First flight from Cairo to Calcutta, 1918. On 12th November, 1919, left London in competition for 10000 for first British aircraft to fly from London to Sydney in 30 days and arrived 28 days later. He was accompanied by his brother, Sir Keith Smith.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Port Adelaide railway loop line with North Arm Road, Wingfield; thence south-easterly along said road, south along Hanson Road, Mansfield Park; east along Chapman Road, Essex Street, Parker Street and Murray Street to Days Road, Ferryden Park; south along Days Road; east along Regency Road, Croydon Park; south along Churchill Road, Prospect; east along Olive Street and Willcox Avenue; north along Main North Road, Prospect and Blair Athol and Port Wakefield Road, Gepps Cross to Dry Creek and Northfield Railway; thence generally westerly along said railway, Adelaide and Gawler Railway and Port Adelaide railway loop line to the point of commencement.

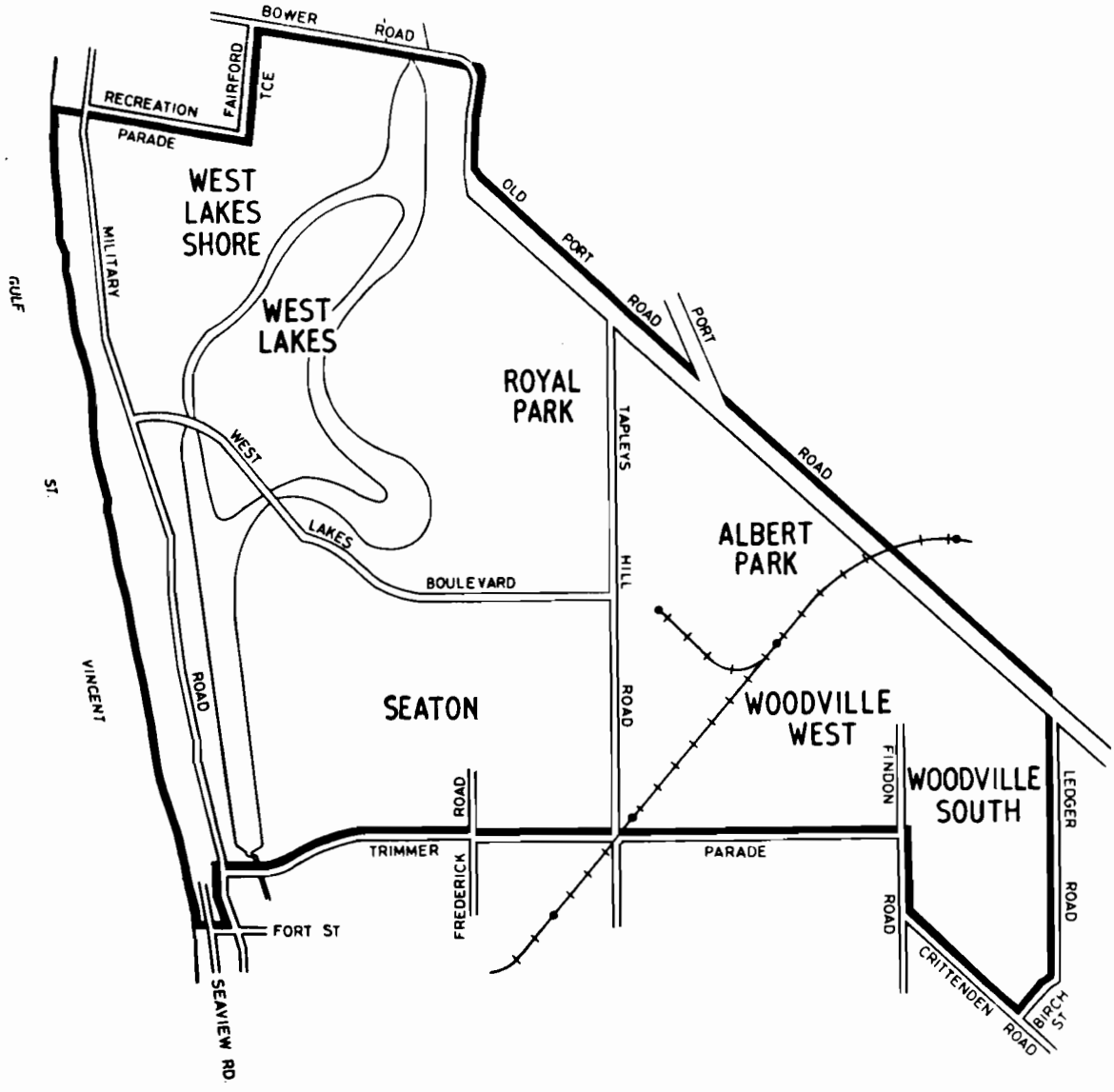
Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

DISTRICT.....ALBERT PARK 45

GENERAL DESCRIPTION:

The District comprises the old Subdivision of Albert Park, less the area south of Trimmer Parade which is in the suburb of Grange. The suburb of West Lakes Shore, together with the southern and eastern portions of Semaphore Park have been added.

ALBERT PARK



August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 443

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

DISTRICT.....ALBERT PARK

NUMBER OF ELECTORS:

ALBERT PARK (Part).....1553
SEMAPHORE (Part).....14673

16226

Deviation fro Quota:

-3.33 per cent

NOTES AS TO NAME:

Named after Prince Albert, Consort of Queen Victoria.

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production westerly of Fort Street, Tennyson; thence easterly along latter production and street; north along Military Road; generally easterly along Trimmer Parade, West Lakes and Seaton; south along Findon Road, Woodville South; south-east along Crittenden Road; north-easterly along Birch Street, north along Ledger Road to the north-east side of Port Road, Woodville; north-west along the north-east side of Port Road, Cheltenham, and Old Port Road, Queenstown; north along the west boundary of part section 1128, hundred of Yatala; west along road south-west of part section 1131, hundred of Port Adelaide and Bower Road, Semaphore Park; south along Fairford Terrace; west along Recreation Parade and production to the sea coast; thence generally southerly along the sea coast to the point of commencement.

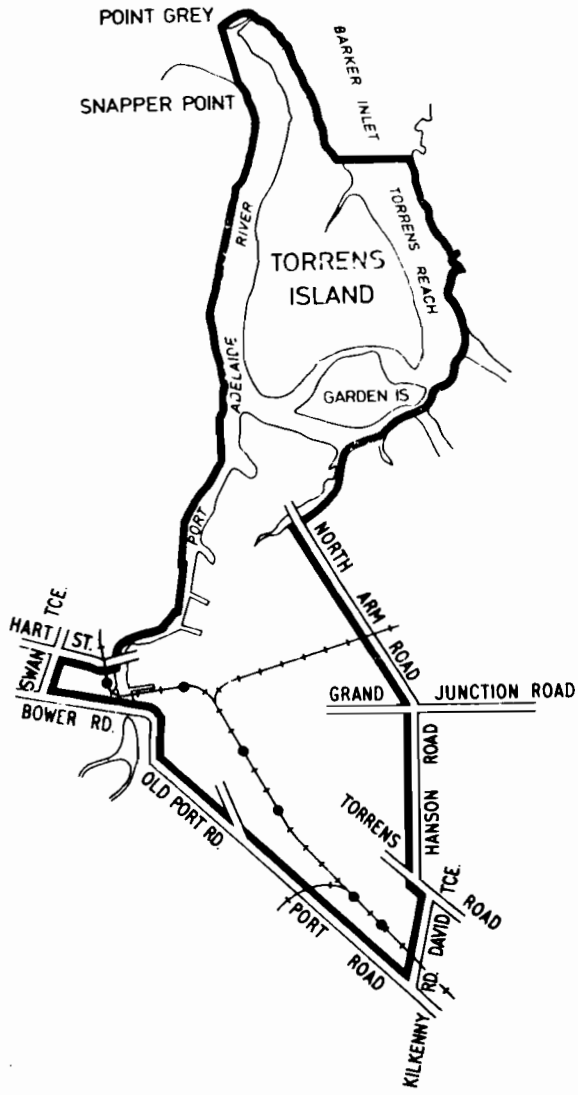
Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976)

DISTRICT.....PRICE 46

GENERAL DESCRIPTION:

This District is identical with the existing District of Price.

PRICE



August, 1976/ THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 445

Exhibit "B" (Appellants) Districts Electoral Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

DISTRICT.....PRICE 46

NUMBER OF ELECTORS:

PRICE.....16771

Deviation from Quota:

-0.08 per cent

NOTES AS TO NAME:

Thomas Price (1852-1909), Premier of South Australia, 1905-1909.

TECHNICAL DESCRIPTION:

Commencing at the intersection of Grand Junction Road and North Arm Road, Ottoway; thence north-westerly along North Arm Road; north-easterly and northerly following the south-eastern and eastern sides of creek. North Arm and Torrens Reach to a point west of the north-western corner of section 328, hundred of Port Adelaide; west across Torrens Reach to the eastern side of Torrens Island; north-westerly and westerly along the north-eastern and northern sides of the said Island to Point Grey; south to Snapper Point and generally southerly and south-westerly along western and northern sides of Port Adelaide River; westerly along Hart Street, Ethelton; south along Swan Terrace; east along Bower Road and road south-west of part section 1131, hundred of Port Adelaide; south along the western boundary of part section 1128, hundred of Yatala; south-easterly along the north-eastern side of Old Port Road, Queenstown, and Port Road, Cheltenham and Woodville Park; northerly along Kilkenny Road and David Terrace, Woodville Park; north-westerly along Torrens Road; thence north along Hanson Road, Woodville North to the point of commencement.

Exhibit "B"
(Appellants)
Districts Electoral Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976
(continued)

DISTRICT.....SEMAPHORE 47

GENERAL DESCRIPTION:

The District comprises the old District of Semaphore, excepting that the suburb of West Lakes Shore, the southern and eastern part of Semaphore Park have been excluded.

SEMAPHORE

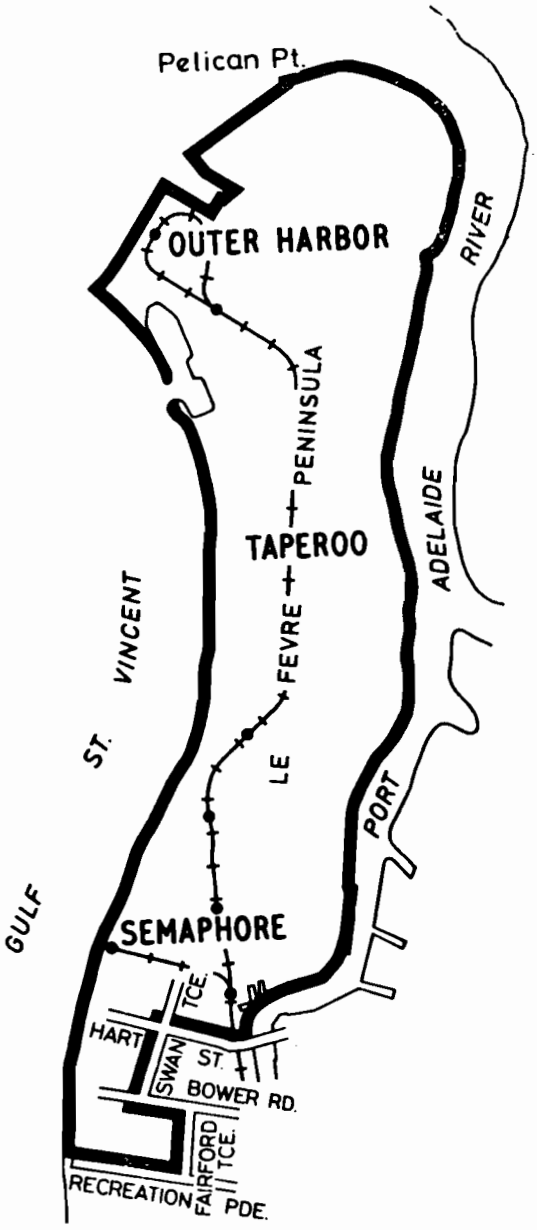


Exhibit "B"
(Appellants)
Districts Electoral Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976
(continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 447

DISTRICT.....SEMAPHORE 47

NUMBER OF ELECTORS:

SEMAPHORE (Part).....17502

Deviation from Quota:

+4.27 per cent

NOTES AS TO NAME:

Name perpetuates the Semaphore signalling station chosen in about 1838.

TECHNICAL DESCRIPTION:

Commencing at a point on the sea coast being its intersection with the production westerly of Recreation Parade, Semaphore Park; thence east along latter production and parade; north along Fairford Terrace; west along Bower Road; north-east along Swan Terrace, Semaphore South; easterly along Hart Street, Glanville; generally north-easterly, northerly and north-westerly along western, northern and south-western sides of Port Adelaide River to Pelican Point; south-westerly along reclaimed land to the northern corner of block 30, hundred of Port Adelaide; again south-westerly along the north-west boundary of block 30 and revetment mound to the sea coast; thence generally southerly following the sea coast to the point of commencement, together with jetties along the sea coast.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

APPENDIX 1

The undermentioned notice was inserted in a number of newspapers circulating throughout the State and specified Country areas.

ELECTORAL DISTRICTS BOUNDARIES COMMISSION

Notice Issued Pursuant to Section 85(1) of the Constitution Act, 1934-1975

The Electoral Districts Boundaries Commission is about to commence proceedings for the purpose of making an Electoral Redistribution.

Pursuant to Section 82(1) of the Constitution Act, 1934-1975, the Commission is required to make an electoral redistribution of the State of South Australia.

For the purpose of making an electoral redistribution Section 83 of the Constitution Act, 1934-1975, requires that the Commission shall as far as practicable have regard to -

(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

(b) the population of each proposed electoral district;

(c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing electoral districts;

(d) the topography of areas within which new electoral boundaries will be drawn;

(e) the feasibility of communication between

electors affected by the redistribution and their parliamentary representatives in the House of Assembly;

and

(f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution,

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976 (continued)

and may have regard to any other matters that it thinks relevant. p.448

In accordance with Section 85(1) of the Constitution Act, 1934-1975, the Electoral Commission invites representations from any person in relation to the proposed redistribution.

A person who desires to make representations to the Commission in relation to the proposed electoral redistribution may do so by instrument in writing, served personally or by post upon the secretary of the Commission, on or before Friday, 19th March, 1976.

Secretary of the Commission:

Mr. J. Guscott,
State Electoral Department,
South British Insurance Building,
83 Currie Street,
Adelaide.

For and on behalf of the Commission:

J. GUSCOTT, Secretary

20th February, 1976

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

August 5, 1976] THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 449

ELECTORAL DISTRICT BOUNDARIES COMMISSION

The following is a list of the newspapers concerned with dates of publication:-

The Advertiser	20/2/76
	23/2/76
The Australian	23/2/76
The News	20/2/76
	23/2/76
S.A. Country Newspapers	25/2/76
Courier, Mount Barker	
The Bunyip, Gawler.	
The Recorder, Port Pirie	
Transcontinental, Port Augusta	
West Cost Sentinel,Streaky Bay	
Y.P.Country Times, Kadina	
S.A. Country Newspapers	26/2/76
M.V. Standard, Murray Bridge	
Murray Pioneer, Renmark	
Port Lincoln Times, Port Lincoln	
Review-Times,Jamestown	
South-Eastern Times, Millicent	
The Border Watch, Mount Gambier	
The Leader, Angaston	
Whyalla News, Whyalla.	

APPENDIX 2

WRITTEN REPRESENTATIONS

Received by 19th March, 1976

L. Cootes	Yeelanna
A.D. Brown	Elliston
A.D. Dodgson	Mount Cooper
K.L. DeGaris	Killara, Naracoorte
B. Fraser	Petherick,Keith
C.G. Baldock	Buckleboo
M.D. Fisher	Parkholme
W.R. Hoole	Naracoorte
P.D. Blacker	Port Lincoln
M.M. Ritchie	Port Lincoln
H.E. Broad	Port Lincoln
A.G. Matheson	National Country Party of S.A.(Inc.)
M.Mackerras	Royal Military College Duntroon Canberra
P. Dunn	Rudall
R. Dixon-Thompson	Port Lincoln
G.J. Pfitzner	Ceduna
J.E. Grigson	Bordertown
D.J. McKinnon	Myrtle Bank
M.M. Wilson	Liberal Movement (Inc.)
J. Bormann	Corporation of City of Salisbury (Inc.)
R.L.Reid & M.Williams	University of Adelaide
D.McK.Cant	Glenunga
E.F. Symons	Port Noarlunga
D. Hill	Frances
L.L. Mengersen	Far Northern Development Association
Hon. H.R. Hudson	Australian Labor Party
W.P. McAnaney	Langhorne Creek
I. Wilson	Member of the House of Representatives for the Division of Sturt
J. Cronin	Chandada
F.W.Wood	Electoral Reform Society of S.A.
K.T. Griffin	Liberal Party of Australia
C. Thiele	Wattle Park

Exhibit "B" (Appellants) Electoral Districts Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

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APPENDIX 3

SITTING DAYS AND DATES OF INVESTIGATIONS

Supreme Court, Thursday, 19th February, 1976.
Parliament House, Tuesday, 24th February, 1976.
Parliament House, Thursday, 25th March, 1976.
Parliament House, Thursday, 1st April, 1976.
Parliament House, Friday, 2nd April, 1976.
Parliament House, Tuesday, 6th April, 1976.
Parliament House, Wednesday, 7th April, 1976.
Parliament House, Friday, 9th April, 1976.
Parliament House, Tuesday, 13th April, 1976.
Parliament House, Wednesday, 14th April, 1976.
Parliament House, Thursday, 15th April, 1976.
Parliament House, Tuesday, 27th April, 1976.
Parliament House, Wednesday, 28th April, 1976.
Parliament House, Thursday, 29th April, 1976.
Parliament House, Friday, 30th April, 1976.
Whyalla, Monday, 3rd May, 1976.
Whyalla, Tuesday, 4th May, 1976.
Port Augusta, Tuesday, 4th May, 1976.
Wudinna, Wednesday, 5th May, 1976.
Ceduna, Thursday, 6th May, 1976.
Yatala, Thursday, 6th May, 1976.
Mount Gambier, Monday, 10th May, 1976.
Mount Gambier, Tuesday, 11th May, 1976.
Bordertown, Tuesday, 11th May, 1976.
Port Lincoln, Wednesday, 12th May, 1976.
Port Lincoln, Thursday, 13th May, 1976.
Parliament House, Tuesday, 18th May, 1976.
Parliament House, Wednesday, 19th May, 1976.
Parliament House, Thursday, 20th May, 1976.
Port Augusta, Monday, 24th May, 1976.
Port Pirie, Tuesday, 25th May, 1976.
Kadina, Wednesday, 26th May, 1976.
Northern Metropolitan Area, Monday, 31st May, 1976
Barossa Valley, Monday, 31st May, 1976.
Southern Metropolitan Area, Tuesday, 1st June, 1976
Woomera, Monday, 14th June, 1976.
Coober Pedy, Tuesday, 15th June, 1976.
Indulkana, Tuesday, 15th June, 1976.
Amata, Wednesday, 16th June, 1976.
Ernabella, Wednesday, 16th June, 1976.
Oodnadatta, Thursday, 17th June, 1976.

Exhibit "B" (Appellants) Electoral Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

LIST OF WITNESSES

Kenneth Trevor Griffin
David Oliver Tonkin
Stanley George Evans
Malcolm Hugh Mackerras
Bruce Charles Eastick
Henry Edward Boord
Ernest Claud Allen
Eric Roger Goldsworthy
Harold Allison
Edwin Keith Russack
Robert Ivan Lucas
Robert Reid/Dr. Michael Williams
William Patrick McAnaney
William Edwin Chapman
John Kenneth Oswald
Michael John Elliott
Jack Bormann
Francis Waverley Wood
Leslie David Boundy
Alexander Maurice Ramsay
Kenneth Charles Taeuber
Peter Moncrieff South
Dean Harold Jaensch
John Rees Black
James Desmond Corcoran
Brenton John Kearney
Maxwell Arnold Sharrad
Matthew Arnold East
Brendan Michael McCormack
Peter Dunn
Gavin Francis Keneally
Don Winton
John Alexander Laird Menard
Isaac Bruce Rayson
Graham John Pfitzner
James Cronin
Graham McDonald Gunn
Jeffrey Charles Bergmann
Frank Charles Kuhlmann
Herbert Cyril Penna
David Ernest Hill
Allan Robert Burdon
Jack Charlton Guy
William Robert Hoole

Exhibit "B" (Appellants) Electoral Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

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Bruce Fraser
James Henry Hennessy
William Edward Fisher
Kenneth Leo De Garis
Gladys Viola Smith
John Alexander Andred
Peter Douglas Blacker
Judith Ann Jackson
Brian Burton
William Hamilton Haldane
Alfred Bruce Moody
Robert Charles Theakstone
Ambrose Duncan Brown
Bruce Wilton Rodgers
Robert Stanthorpe Schunke
Arthur Mornington Whyte
Harold Edward Alfred John Broad
Robert John Beckwith
John Charles Staines

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Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued)

APPENDIX 4

ELECTORAL DISTRICTS BOUNDARIES COMMISSION

List of Exhibits

1. Letter from Premier to the Honourable Mr. Justice Bright dated 17th February, 1976.
2. Notice issued pursuant to Section 85 (1) of the Constitution Act, 1934-1975.
3. State Assembly Districts-Enrolment as at 6/2/76.
4. List of written submissions received by 19/3/76.

Submissions

5. L. Cootes.....Yeelanna
6. A.D. Brown.....Elliston
7. A.D. Dodgson.....Mount Cooper
8. K.L. De Garis.....Killara, Naracoorte
9. B. Fraser.....Petherick, Keith
10. C.G. Baldock.....Buckleboo
11. M.D. Fisher.....Parkholme
12. W.R. Hoole.....Naracoorte
13. P.D. Blacker.....Port Lincoln
14. M.M. Ritchie.....Port Lincoln
15. H.E. Broad.....Port Lincoln
16. A.G. Matheson.....National Country Party of S.A. (Inc.)
17. M. Mackerras.....Royal Military College Duntroon, Canberra
18. P. Dunn.....Rudall
19. R. Dixon-Thompson.....Port Lincoln
20. G.J. Pfitzner.....Ceduna
21. J.E. Grigson.....Bordertown
22. D.J. McKinnon.....Myrtle Bank
23. M.M. Wilson.....Liberal Movement (Inc.)
24. J. Bormann.....Corporation of City of Salisbury (Inc.)
25. R.L. Reid & M. Williams.....University of Adelaide
26. D. McK. Cant.....Glenunga
27. E.F. Symons.....Port Noarlunga
28. D. Hill.....Frances
29. L.L. Mengerson.....Far Northern Development Association

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 453 & p. 454

30. Hon. H.R. Hudson.....Australian Labor Party
31. W.P. McAnaney.....Langhorne Creek
32. I. Wilson.....Member for Sturt
33. J. Cronin.....Chandada
34. F.W. Wood.....Electoral Reform Society of S.A.
35. K.T. Griffin.....Liberal Party
35A. C. Thiele.....Wattle Park
36. State Assembly Districts-Enrolment as at 6/2/76 tendered on behalf of K.T. Griffin.
37. First Report of the Royal Commission into Local Government Areas-tendered on behalf of K.T. Griffin.
38. List of figures involving two parties A & B with different votes in five electorates-tendered on behalf of K.T. Griffin.
39. Document entitled Periodical and General Election 1975 - statistical returns showing the voting at each polling place and within each district - tendered on behalf of K.T. Griffin.
40A. Pendulum at p. 186 of book entitled Elections 1975 by Malcolm Mackerras - tendered on behalf of K.T. Griffin.
40B. Pendulum in Bulletin article by Malcolm Mackerras-tendered on behalf of K.T. Griffin.
41. Percentage Dispersion of Swings. Extract of figures from Australian General Election p.p. 196-201-tendered on behalf of Hon. H.R. Hudson.
42. Book entitled Metropolitan Development Plan. Supplementary Development Plan-Mount Lofty Ranges-tendered on behalf of K.T. Griffin.
43. Report of Electoral Commission 1969-tendered on behalf of Hon. H.R. Hudson.
44. Map showing Goyder's lines of rainfall-tendered on behalf of Hon. H.R. Hudson.
45. Document entitled 1975 Elections in S.A.- A Statistical Analysis by Dr. Dean Jaensch-tendered on behalf of K.T. Griffin.
46. Article entitled A Functional Gerrymander-South Australia 1944-1970 by Dr. Dean Jaensch-tendered on behalf of K.T. Griffin.
47. 1970 Election Analysis by Mr. Lucas entitled Annexure "A" 1970-tendered on behalf of K.T. Griffin.
48. Document entitled A.L.P. Over-Representation 1970-1975 by Mr. Lucus-tendered on behalf of K.T. Griffin.

49.	Document entitled Periodical and General Election 1970-statistical returns showing the voting at each polling place and within each district-tendered on behalf of Hon. H.R. Hudson.	Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 454
50.	Calculations from Dr. Jaensch's pamphlet entitled Two Party Preferred Vote-A.L.P.-1973-tendered on behalf of Hon. H.R. Hudson.	
51.	Two subdivisional tables entitled- 1. Liberal Party Submission-Subdivisions with an enrolment below correct figure; 2. Liberal Party Submission-Subdivision with an enrolment above correct figure-tendered on behalf of Hon. H.R. Hudson.	
52.	Copy of document entitled State of South Australia Statistical Returns for the House of Representatives Election, December 1972-tendered on behalf of Hon. H.R. Hudson.	
53.	Statistical returns for the State of South Australia for the General Election for the House of Representatives 1974-tendered on behalf of Hon. H.R. Hudson.	
54.	Periodical and General Elections 1973-in relation to the Legislative Council Elections and the House of Assembly Elections held on 10th March, 1973-tendered on behalf of Hon. H.R. Hudson.	
55.	Article entitled One vote one value-what is means and how it can be achieved-tendered by Dr. Wood.	
56.	Document entitled New South Wales Federal Elections-A.L.P.-Two Party Preferred Vote-tendered on behalf of Hon. H.R. Hudson.	
57.	Document entitled Two Party Preferred Vote (Subdivisional) by State Districts-tendered on behalf of Hon. H.R. Hudson.	
58.	Document entitled Two Party Preferred Vote (Subdivisional)-1975 State and Federal-A.L.P. Percentage-tendered on behalf of Hon. H.R. Hudson.	
59.	Metropolitan housing programme of the Housing Trust covering completion from 1970-71 to 1974-75: estimate of completions for 1975-76, and the projected completions for the five year period 1976-77 through to 1980-81.	

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 454

60. Two page document showing Housing Trust's modified housing programme for 14 country centres over period 1975-76 to 1980-81, tendered on behalf of Hon. H.R. Hudson.

61. Three page document giving detailed account of Housing Trust's housing programme for 54 country centres over period 1975-76 to 1980-81-tendered on behalf of Hon. H.R. Hudson.

62. Map of Metropolitan Development Plan-tendered on behalf of Hon. H.R. Hudson.

63. Map of Hundred of Riddoch-tendered on behalf of Hon. H.R. Hudson.

64. Map of Hundred of Mundullo-tendered on behalf of Hon. H.R. Hudson.

65. Map of Hundred of Tatiara-tendered on behalf of Hon. H.R. Hudson.

66. Map of Metropolitan Planning Area of Adelaide plus Gawler-tendered on behalf of Hon. H.R. Hudson.

67. Map of Hundred of Nuriootpa-tendered on behalf of Hon. H.R. Hudson.

68. Map of Hundred of Moorooroo-tendered on behalf of Hon. H.R. Hudson.

69. Map of Hundred of Jellicoe-tendered on behalf of Hon. H.R. Hudson.

70. Map of Hundred of Kuitpo-tendered on behalf of Hon. H.R. Hudson.

71. Map of Hundred of Kondoparinga-tendered on behalf of Hon. H.R. Hudson.

72. Map of Hundred of Onkaparinga-tendered on behalf of Hon. H.R. Hudson.

73. Map of Hundred of Talinga-tendered on behalf of Hon. H.R. Hudson.

74. Map of Hundred of Clare-tendered on behalf of Hon. H.R. Hudson.

75. Three page document entitled Adjustments to Hudson's Submission of major part of Fisher South is included in Metropolitan Area-tendered on behalf of Hon. H.R. Hudson.

76. Map of Lower South-East of South Australia and south-west Victoria showing pine forest areas and major utilisation plants-tendered on behalf of Hon. H.R. Hudson.

77. Letter from Department of Defence indicating that on present planning the population in Woomera will have been reduced to between 2 000 and 2 500 by end of 1978-tabled by Commission.

Exhibit "B" (appellants) Electoral Districts' Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 455

78. Letter from the Chief Civil Engineer of the Australian National Railways with route map of Tarcoola and Alice Springs Railway attached-tabled by Commission.

79. Three page article entitled Research techniques and their applications in the Social Sciences on Measuring Malapportionment-The South Australian Electoral System by Dr. Jaensch-tendered on behalf of Hon. H.R. Hudson.

80. One page article entitled Flinders University, School of Social Science, Discipline of Politics: South Australian Electoral Systems: the Party Effects of Malapportionment by Dr. Jaensch-tendered on behalf of Hon. H.R. Hudson.

81. Five page article entitled A comparison of voting patterns in South Australia Federal and State Elections 1970-1975-tendered on behalf of Hon. H.R. Hudson.

82. Article 1. entitled Whyalla and Stuart electorates-their disproportionate potential for electoral growth by John Black-tendered on behalf of Hon. H.R. Hudson.

83. Article 2. entitled Existing S.A. State Electorates-their ethnic communities of interest and their potential for electoral growth from resident Adult Aliens by John Black-tendered on behalf of Hon. H.R. Hudson.

84. Article 3. entitled An Examination of Communities of Inrerest-the S.A. State Seats of Mitcham, Unley, Bragg, Davenport, Norwood, Coles and Gilles by John Black-tendered on behalf of Hon.H.R. Hudson.

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 456

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98.10 Map of Eyre Peninsula showing traffic flow-tendered by P. Blacker.

98.12 Map of Eyre Peninsula showing water supply-tendered by P.Blacker.

99. Map showing boundaries as proposed by P. Blacker-tendered by P. Blacker.

100. (a) Graphs re population /age prepared by Mr. Elliott-tendered on behalf of K.T. Griffin.

101. Map of Metropolitan Adelaide showing Council Planning Regulations-Zoning-tendered on behalf of Hon. H.R. Hudson.

102. Document indicating circulation (including agents and subscription) of West Coast Sentinel-tendered on behalf of Hon. H.R. Hudson.

103. Document indicating circulation by agents of Port Lincoln Times as at 18th May, 1976-tendered on behalf of Hon. H.R. Hudson.

Exhibit "B" (appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August, 1976) (continued) p. 456

104. Document indicating circulation by agents of Port Lincoln Times as at 18th May, 1976-tendered on behalf of Hon. H.R. Hudson.

105. Document showing statistical returns and the voting at each polling place and within each district of the House of Representatives Election held on 13th December, 1975-tendered on behalf of Hon. H.R. Hudson.

106. Four page document showing the ranking of existing electorates in terms of various factors-tendered on behalf of Hon. H.R. Hudson.

107. Survey map of Hills Face Zone-tendered on behalf of Hon. H.R. Hudson.

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976) (continued)

APPENDIX 5

The total number of House of Assembly electors in South Australia as at 30th June, 1976, was 788909.

30th June, 1976, is fixed as the relevant date.

The State quota as at the relevant date was 16785.

Exhibit "B"
(Appellants)
Electoral Districts Boundaries Commission Report 1976
(Extract from Government Gazette of 5th August 1976)
(continued)

APPENDIX 6

NUMERICAL LIST OF DISTRICTS 1976, SHOWING NUMBER OF HOUSE OF ASSEMBLY ELECTORS ON 30th JUNE, 1976

No.	Name	No. of Electors	Deviation from Quota
1.	Mount Gambier	16431	-2.11
2.	Victoria	15274	-9.00
3.	Mallee	15304	-8.82
4.	Chaffey	16960	+1.04
5.	Eyre	15303	-8.83
6.	Stuart	16700	-0.51
7.	Rocky River	16359	-2.54
8.	Goyder	16011	-4.61
9.	Light	15387	-8.33
10.	Kavel	16635	-0.89
11.	Murray	15928	-5.11
12.	Alexandra	15950	-4.97
13.	Flinders	15345	-8.58
14.	Whyalla	17008	+1.33
15.	Napier	16140	-3.84
16.	Elizabeth	16313	-2.81
17.	Salisbury	17109	+1.93
18.	Playford	17278	+2.94
19.	Newland	16561	-1.33
20.	Todd	16491	-1.75
21.	Florey	17638	+5.08
22.	Gilles	17320	+3.19
23.	Hartley	18233	+8.62
24.	Coles	16447	-2.01
25.	Davenport	17068	+1.69
26.	Norwood	17610	+4.92
27.	Bragg	17300	+3.07
28.	Unley	16733	-0.31
29.	Mitcham	17265	+2.86
30.	Fisher	17398	+3.65
31.	Baudin	16523	-1.56
32.	Mawson	16519	-1.58
33.	Brighton	17543	+4.52
34.	Mitchell	17467	+4.06
35.	Glenelg	17519	+4.37
36.	Ascot Park	16973	+1.12
37.	Morphett	17580	+4.74
38.	Hanson	17716	+5.55
39.	Adelaide	17522	+4.39

Exhibit "B" (Appellants)

Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

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No.	Name	No. of Electors	Deviation from Quota
40.	Torrens	17497	+4.24
41.	Peake	17132	+2.07
42.	Henley Beach	17472	+4.09
43.	Spence	16418	-2.19
44.	Ross Smith	17030	+1.46
45.	Albert Park	16226	-3.33
46.	Price	16771	-0.08
47.	Semaphore	17502	+4.27

TOTAL ENROLMENT FOR STATE.....788909

Errata 986 included in Coles who should be in Hartley

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Exhibit "B" (Appellants) Electoral Districts Bounderies Commission Report 1976

(Extract from Government Gazette of 5th August 1976)

(Continued)

APPENDIX 7

ALPHABETICAL LIST OF DISTRICTS 1976, SHOWING NUMBER OF HOUSE OF ASSEMBLY ELECTORS ON 30th JUNE 1976.

	Adelaide	17 522
	Albert Park	16 226
	Alexandra	15 950
10	Ascot Park	16 973
	Baudin	16 523
	Bragg	17 300
	Brighton	17 543
	Chaffey	16 960
	Coles	17 433
	Davenport	17 068
	Elizabeth	16 313
	Eyre	15 303
	Fisher	17 398
20	Flinders	15 345
	Florey	17 638
	Gilles	17 320
	Glenelg	17 519
	Goyder	16 011
	Hanson	17 716
	Hartley	17 247
	Henley Beach	17 472
	Kavel	16 635
	Light	15 387
30	Mallee	15 304
	Mawson	16 519
	Mitcham	17 265
	Mitchell	17 467
	Morphett	17 580
	Mount Gambier	16 431
	Murray	15 928
	Napier	16 140
	Newland	16 561
	Norwood	17 610
40	Peake	17 132
	Playford	17 278
	Price	16 771
	Rocky River	16 359

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976

(Extract from Government Gazette of 5th August 1976

(Continued)

Ross Smith	17	030
Salisbury	17	109
Semaphore	17	502
Spence	16	418
Stuart	16	700
Todd	16	491
Torrens	17	497
Unley	16	733
Victoria	15	274
Whyalla	17	008
TOTAL ENROLMENT FOR STATE	788	909

APPENDIX 8

HOUSE OF ASSEMBLY ENROLMENTS BY SUBDIVISION (1969 DISTRIBUTION) AND DISTRICTS (1976 DISTRICTION)

Subdivision (1969 Distribution	District (1976 Distribution)	Part	No. of Electors in Sub-division at 30/6/76
Adelaide	Adelaide	3 421	3 421
Albert Park	Albert Park	1 553	
	Henley Beach	365	1 918
Alexandra	Alexandra	13 768	13 768
Angle Park	Ross Smith	4 183	4 183
Ascot Park	Ascot Park	16 973	16 973
Beverley	Peake	3 830	3 830
Bragg	Bragg	15 766	
	Davenport	775	16 541
Brighton	Brighton	13 982	
	Glenelg	6 247	20 229
Chaffey	Chaffey	12 830	12 830
Coles	Coles	10 769	
	Hartley	10 935	21 704
Davenport	Coles	6 664	
	Davenport	11 216	
	Hartley	76	17 956
Elizabeth	Elizabeth	4 113	
	Napier	16 140	20 253
Eyre	Eyre	6 917	
	Flinders	3 238	10 155
Fisher East	Fisher	5 494	5 494
Fisher North	Davenport	5 077	
	Fisher	6 489	11 566
Fisher South	Fisher	1 489	1 489
Fisher West	Fisher	3 380	3 380
Flagstaff Hill	Brighton	2 052	
	Mawson	2 060	4 112
Flinders	Flinders	12 107	12 107
Florey East	Florey	8 435	
	Gilles	2 240	10 675
Florey West	Florey	9 203	
	Gilles	1 769	10 972
Frome North	Eyre	6 542	
	Light	1 846	8 388
Frome South	Light	395	395

Exhibit "B" (Appellants) Electoral Districts Boundaries Commission Report 1976 (Extract from Government Gazette of 5th August 1976)

(Continued)

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Gilles East	Gilles	5	060		
	Hartley	6	236	11	296
Gilles West	Gilles	8	251	8	251
Glenelg	Glenelg	11	272		
	Morphett	7	301	18	573
Goodwood	Unley	10	119	10	119
Gouger	Goyder	4	902		
	Rocky River	5	847	10	749
Goyder	Goyder	11	109	11	109
Hanson East	Hanson	6	402		
	Morphett	2	160	8	562
Hanson North	Hanson	3	245	3	245
Hanson South	Morphett	8	119	8	119
Henley Beach	Hanson	4	006		
	Henley Beach	17	107	21	113
Heysen North	Kavel	3	439		
	Murray	5	474	8	913
Heysen South	Alexandra	2	182		
	Mallee	2	322	4	504
Highbury	Newland	5	135		
	Todd	16	491	21	626
Kavel	Kavel	11	095	11	095
Leabrook	Bragg	1	534	1	534
Light North	Light	10	551	10	551
Light South	Kavel	2	101	2	101
Mallee North	Chaffey	4	130		
	Mallee	3	821	7	951
Mallee South	Mallee	2	967	2	967
Marleston	Adelaide	4	915	4	915
Mawson	Baudin	13	720		
	Brighton	1	509		
	Mawson	14	459	29	688
Millicent	Mallee	2	693		
	Mt. Gambier	3	650		
	Victoria	5	475	11	818
Mitcham	Mitcham	17	265	17	265
Mitchell	Fisher		546		
	Mitchell	17	467	18	013
Moana	Baudin	2	803	2	803
Modbury North	Newland	11	272	11	272
Mount Gambier	Mt.Gambier	12	781	12	781
Murray North	Mallee		232		
	Murray	10	454	10	686
Murray South	Mallee	1	900	1	900
Norwood	Norwood	8	805	8	805
Peake	Hanson	4	063		
	Peake	13	302	17	365
Pirie	Rocky River	2	515		
	Stuart	8	562	11	077

	Playford	Elizabeth	12	200		Exhibit
		Newland		154		"B"
		Playford	13	404		(Appellants)
		Salisbury		619	26 377	Electoral
	Price	Price	16	771	16 771	Districts
	Rocky River	Light	2	595		Bounderies
		Rocky River	7	997	10 592	Commission
	Ross Smith	Ross Smith	12	708	12 708	Report
	St. Peters	Norwood	8	805	8 805	1976
10	Salisbury	Playford	3	874		
		Salisbury	16	490	20 364	(Extract
	Semaphore	Albert Park	14	673		From
		Semaphore	17	502	32 175	Government
	Spence North	Ross Smith		139		Gazette
		Spence	6	696	6 835	of 5th
	Spence South	Spence	9	722	9 722	August
	Stuart	Eyre	1	844		1976)
		Stuart	8	138		
		Whyalla	5	369	15 351	
20	Thebarton	Adelaide	9	186	9 186	
	Torrens	Torrens	17	497	17 497	
	Unley	Unley	6	614	6 614	
	Victoria	Mallee	1	369		
		Victoria	9	799	11 168	
	Whyalla	Whyalla	11	639	11 639	

(Appellants) Exhibit "C" Imperial Order in Council dated the 23rd day of February, 1836

(APPELLANTS) EXHIBIT "C"

IMPERIAL ORDER IN COUNCIL DATED THE 23RD DAY OF FEBRUARY, 1836.

South Australia Order authorizing certain persons to make laws for the Government of South Australia

Whereas by a certain Act of Parliament passed in the fifth year of His Majesty's Reign intituled "An Act to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the colonization and Government thereof" it is amongst other things enacted "that it shall and may be lawful for His Majesty, His Heirs and Successors by any Order or Orders to be by him or them made with the advice of his or their Privy Council, to make, ordain and subject to such conditions and restrictions as to him or them shall seem meet, to authorize and empower any one or more persons resident or being within any one of the said Provinces, to make, ordain and establish all such Laws, institutions or ordinances, and to constitute such Courts and appoint such officers and also such Chaplains and Clergymen of the Established Church of England and Scotland, and to impose and levy such rates, duties and Taxes, as may be necessary for the peace, order and good government of His Majesty's subjects and others within the said Province or Provinces, provided that all such Orders and all Laws and Ordinances to be made as aforesaid shall be laid before the King in Council as soon as conveniently may be after the making and enacted thereof respectively and that the same shall not be contrary, or repugnant to any of the Provisions contained in the Act." And whereas in the exercise of the authority given to His Majesty by Letters Patent bearing Date the nineteenth day of February 1836 hath erected and established one Province to be called the Provinces of South Australia and hath fixed the Boundaries of the said Province in manner following that is to

(Appellants) Exhibit "C" Imperial Order in Council dated the 23rd day of February, 1836 (continued)

say on the North the twenty sixth degree of South Latitude on the South the Southern Ocean on the West the one hundred and thirty second degree of East Longitude and on the East the one hundred and forty-first degree of East Longitude, including therein all and every the Bays and Gulfs thereof together with the Island called Kangaroo Island and all and every other Islands adjacent to the said last mentioned Island or to any part of the main land of the said Province and in the said Letters Patent is contained a proviso that nothing therein contained shall affect or be construed to affect the rights of any Aboriginal natives of the said Province to the actual occupation or enjoyment in their own persons or in the Persons of their descendants any Lands therein now actually occupied or enjoyed by such Natives His Majesty does therefore, with the advice of His Privy Council and in pursuance and exercise of the authority in him vested by the said Act, order, and it is hereby ordered that the Governor for the time being of His Majesty's said Province of South Australia, or the officer administering the Government thereof, the Judge or Chief Justice, Colonial Secretary, the Advocate General, and the resident Commissioner thereof for the time being, so long as they shall be respectively resident in the said Province, or any three of them, of whom the acting Governor to be one, shall have authority and power to make, ordain and establish all such Laws, Institutions, or Ordinances and to constitute such Courts and appoint such officers, and also such Chaplains or Clergymen of the Established Church of England and also such Chaplains or Clergymen of the Established Church of Scotland and to impose and levy such Rates, duties and Taxes as may be necessary or expedient for the peace, order and good Government of His Majesty's subjects and others within the said Province, which power and authority shall nevertheless be exercised subject to the following conditions and restrictions that is to say that all such Laws, Institutions and Ordinances as aforesaid shall by the said Governor or Officer administering the Government with all convenient expedition be transmitted to His Majesty for his approbation or

(Appellants) Exhibit "C" Imperial Order in Council dated the 23rd day of February, 1836 (continued)

disallowances through one of His Principal Secretaries of State and that the same or such part thereof if any as shall be disallowed shall not be in force within the said Province, after His Majesty's disallowance thereof, shall be made known in the said Province and that the same shall not in any wise be contrary or repugnant to any of the provisions of the said recited Act. And further that no such Law institution or ordinance shall be made unless the same shall have first been proposed by the said Governor or Officer administering the Government, and further that in making all such Laws Institutions and Ordinances the said several persons shall and do conform to all such Institutions as His Majesty shall from time to time be pleased to issue for that purpose. And the Right Honorable Lord Glenelg one of His Majesty's Principal Secretaries of State is to give the necessary directions herein accordingly.

PART III

No.1

Secretary:
J.GUSCOTT
(COAT OF ARMS)
G.P.O.BOX 344
ADELAIDE 5001

Telephone: 51 9258

ELECTORAL DISTRICTS BOUNDARIES COMMISSION

ADELAIDE

23rd August, 1976

Memorandum Issued By Electoral Districts Boundaries Commission (Extract from the Government Gazette of 5th August 1976) Dated the 23rd Day of August,1976.

Certain errata in the Report have just been drawn to my attention. I am unable to call an immediate meeting of the Commission because both of the other Commissioners are out of the State. With their concurrence, obtained by telephone, I now publish the necessary corrections.

(Sgd.) C.H. BRIGHT
Chairman of the Commission.

REPORT OF ELECTORAL DISTRICTS BOUNDARIES COMMISSION

Erratum

The following amendments to the report published on 5th August 1976 should be made:-

Page 25 line 8 delete Arthur and insert Alfred

Page 63, DISTRICT HARTLEY, delete details of NUMBER OF ELECTORS and insert

COLES (Part)	11997
GILLES EAST (Part)	6236
	18233

Deviation from Quota, delete + 2.75 per cent and insert + 8.62 per cent

Page 65, DISTRICT COLES, delete details of NUMBER OF ELECTORS and insert

COLES (Part)	9707

DAVENPORT (Part) 6740
16447

Memorandum Issued By Electoral Districts Boundaries Commission (Extract From the Government Gazette of 5th August 1976) Dated the 23rd Day of August, 1976

Delete Deviation from Ouota + 3.86 per cent and insert - 2.01 per cent

Page 91 line 12 delete 1854 and insert 1841-2

Page 122 Appendix 6 District No. 23 HARTLEY Delete existing detail and insert 18233. Deviation from Quota + 8.62 per cent

District No. 24 COLES delete existing detail and insert 16447. Deviation from Quota - 2.01 per cent

Page 123 Appendix 7 District of Coles delete 17433 and insert 16447.

District of Hartley delete 17247 and insert 18233

Page 124 Appendix 8 Subdivision of Coles delete existing detail in column 3 and insert

COLES	9707
HARTLEY	11997

Subdivision of Davenport delete existing detail in column 3 and insert

COLES	6740
DAVENPORT	11216

No.2

Notice of Appeal From Electoral Boundaries Commission -Brian Oswald Tayler Dated the 1st Day Of September 1976

NOTICE OF APPEAL FROM ELECTORAL DISTRICTS BOUNDARIES COMMISSION

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1401 of 1976

In the matter of an Electoral Redistribution under the Constitution Act 1934 - 1975 Between

BRIAN OSWALD TAYLER

Appellant

ELECTORAL DISTRICTS BOUNDARIES COMMISSION

Respondent

Notice Of Appeal From Electoral Boundaries Commission - Brian Oswald Tayler Dated the 1st day September 1976

(Continued)

TAKE NOTICE that I BRIAN OSWALD TAYLER of 16 Pelham Road Port Pirie in the State of South Australia, Optometrist, and an elector hereby appeal to the Full Court of the Supreme Court against the order of the Electoral Districts Boundaries Commissioner published in the Gazette on the 5th day of August 1976 on the ground that the order has not been duly made in accordance with the Constitution Act 1934-1975.

PARTICULARS

1. The Respondent did not duly apply the respective criteria contained in Section 83 of the said Act in making the said order and in relation to Port Pirie did not have sufficient regard to the matters referred to in Section 83 of the said Act with respect to the electoral re-distribution as it affects the said City as follows:-

(1) With reference to Section 83 (a) of the said Act, there is no community of interest between the City of Port Pirie and the City of Port Augusta other than that they are both industrial cities. Both cities are to a great extent rivals in seeking to attract new industries and consolidating present employment situations and the two cities tend to live

Notice Of Appeal From Electoral Boundaries Commission - Brian Oswald Tayler Dated the 1st day September 1976

(Continued)

distinctly independent social and economic existences. There is a conflict of interest rather than community interest between the two cities.

(2) With reference to Section 83 (c) of the said Act the Respondent has unduly disturbed the boundaries of existing electoral districts and whereas the existing electoral district of Port Pirie required extension to other areas it is undesirable that such a distinct existing electoral district should be merged with the equally distinct electoral district of Port Augusta.

(3) With reference to Section 83 (d) of the said Act the Respondent has failed to preserve the topographical unity of the City of Port Pirie by redistributing a large part of the city to the extent of two thousand five hundred and fifteen electors to the electoral district of Rocky River.

(4) With reference to Section 83 (e) of the said Act the Respondent has misinterpreted the "feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly". The merging of the cities of Port Pirie and Port Augusta in the new district of Stuart contravenes the said criterion in that communication between electors in either of the cities will not now be feasible.

2. The Appellant contends that there were Courses available to the Respondent in accordance with the said Act which would have avoided the matters of objection hereinbefore mentioned in these particulars and that the Respondent should have proceeded accordingly.

DATED this Second day of September, 1976.

(Sgd.) Brian Tayler
Appellant.

The Address at which notices and other documents may be left is for or posted to the Appellant is Lempriere Abbott McCleod of A.D.C. Building 51 Grenfell Street, Adelaide, Adelaide Agents for John B. Byrne, Solicitor 131 Ellen Street Port Pirie, Solicitor for the Appellant.

Notice of Appeal From Electoral Boundaries Commission - Brian Oswald Tayler Dated the 1st day of September 1976

(Continued)

No. 3

Notice of Appeal Against Order of Electoral Districts Boundaries Commission- Herbert Keith Frost Dated the 3rd Day of September 1976

NOTICE OF APPEAL FROM ELECTORAL DISTRICT BOUNDARIES COMMISSION

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1404 of 1976

IN THE MATTER of an ELECTORAL REDISTRIBUTION AND CONSTITUTION ACT 1934-1975

B E T W E E N:

HERBERT KEITH FROST

Appellant

- and -

ELECTORAL DISTRICT BOUNDARIES COMMISSION

Respondent

TAKE NOTICE that I HERBERT KEITH FROST of 20 Adamson Avenue Belair in the State of South Australia Company Director HEREBY APPEAL to the Full Court of the Supreme Court against the order of the Electoral District Boundaries Commission published in the Gazette on the 5th day of August, 1976 on the ground that the order has not been duly made in accordance with the Constitution Act 1934-1975.

Notice of Appeal Against Order of Electoral Districts Boundaries Commission Herbert Keith Frost Dated The 3rd Day of September 1976

(Continued)

PARTICULARS

The said order has not been duly made in accordance with the said Act for the following reasons:

1. (a) The Commission in making its said order declined to take into account or to examine or to consider the political effect of its said order and failed to scrutinise the effect of the said order in the same way as it would have been the obligation of the Governor so to do in respect of any redistribution made prior to the Constitution Act Amendment Act (No. 5) 1975; an examination of the effect of the redistribution is that the redistribution is one which the Governor in exercise of his Reserve or Prerogative powers may not have tolerated;

(b) For any electoral system for a State to be fair (and in particular when the "Westminster System" of Government operates) it must ensure, as far as it is possible to do so, that if a Party or grouping of Parties gains a majority of the votes cast throughout the State on the two-Party preferred system, that Party or grouping of parties should form Government.

By purporting to rely solely on the specific criteria in Section 83 of the Constitution Act 1934-1975 the Commission has produced a redivision of electoral boundaries which is neither fair nor reasonable.

In considering the electoral boundaries redivision the Commission should have had regard to the possible political consequences of the redivision and given weight to past voting patterns and principles of electoral fairness generally accepted by the community. The Commission should have given weight to the principle that the Party or grouping gaining 50% + 1 of the two-Party preferred vote throughout South Australia should

be the party or grouping forming Government. It is submitted that the Commission could have devised boundaries which were consistent with the mandatory criteria and which, taking into account the principles of electoral fairness referred to above, would have produced a fair electoral redistribution.

Notice of Appeal Against Order of Electoral Districts Boundaries Commission Herbert Keith Frost Dated the 3rd Day of September 1976

(Continued)

2. In considering the criterion in Section 83 (c), namely, "the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made", the Commission placed undue emphasis on this criterion in respect of certain proposed electoral districts within the metropolitan area, particularly those in the immediate vicinity of the City of Adelaide and to its north and north-west. This has contributed to the unfairness of the result referred to in clause 1 hereof.

3. In considering the criterion in Section 83(b) of the said Act, namely, "the population of each electoral district", the Commission did not correctly interpret the meaning of the word "population" as it appears in the context of Section 83(b) of the said Act and therefore did not correctly apply that criterion.

4. The Commission did not take into account sufficiently the desirability of using the tolerances permitted by the said Act otherwise than in an arbitary manner and in particular, without limiting the effect thereof, in the defining of the boundaries of the proposed electorates of Hartley and Coles.

5. Generally, the order was not made in accordance with the evidence and the weight and effect of the evidence before the Commission, or in accordance with the submissions and the weight and effect of the submissions presented to the Commission.

Notice of Appeal Against Order of Electoral Districts Boundaries Commission Herbert Keith Frost Dated the 3rd Day of September 1976

DATED this 3rd day of September 1976.

(Sgd.) H.K.Frost
Appellant

The address at which notices and other documents may be left for or posted to the Appellant is Messrs. O'Loughlin Robertson & Co. of 118 King William Street Adelaide.

(Continued)

No. 4

Notice of Appeal Against Order of Electoral Districts Boundaries Commission-Gladys Viola Smith, Dated the 3rd day of September 1976

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1406 of 1976

IN THE MATTER of an Electoral Redistribution under the Constitution Act 1934-1975.

B E T W E E N:

GLADYS VIOLA SMITH

Appellant

- and -

ELECTORAL DISTRICTS BOUNDARIES COMMISSION

Respondent

TAKE NOTICE that I GLADYS VIOLA SMITH of 20 Mount Gambier Road, Millicent in the State of South Australia HEREBY APPEAL to the Full Court of the Supreme Court against the order of the Electoral Districts Boundaries Commission published in the Gazette on the 5th day of August 1976 on the ground that the order has not been duly made in accordance with the Constitution Act 1934-1975.

PARTICULARS

The said order making an electoral redistribution was not made in accordance with the said Act in that in making its said order and in defining the boundaries of the electoral districts of Mount Gambier, Victoria and Mallee the said Commission:

Notice of Appeal Against Order of Electoral Districts Boundaries Commission - Gladys Viola Smith, dated the 3rd day of September 1976

(Continued)

1. (a) (i) failed to have sufficient regard to identifying and recognising in its order the communities of interest existing amongst the population of each of the said electoral districts thereby defined in particular the communities of interest existing in respect of fishing and fish processing industries; agriculture and its associated services including co-operatives; forestry; water resources; planning policies and administration; tourism; public services including medical, dental, veterinary, educational and library services; community facilities including retail shopping, banking, sporting, recreational, cultural, child and elderly citizen care facilities; service clubs and other clubs and societies; services provided by Departments of Community Welfare and Further Education and other governmental and semi-governmental agencies and services.

(ii) failed to recognise the communities of interest between the southern part of the electoral district of Victoria and the southern part of the electoral district of Mallee thereby defined.

(b) failed to recognise:

Notice of Appeal Against Order of Electoral Districts Boundaries Commission - Gladys Viola Smith, dated the 3rd day of September 1976

(Continued)

(i) the relative insufficiency in communities of interest existing between the populations of the northern, southern, western and central parts of the electoral district of Mallee thereby defined.

(ii) the insufficient communities of interest or lack of community of interest between the northern and southern parts of the electoral district of Victoria thereby defined.

2. Failed to have sufficient regard to the desirability of leaving undisturbed the boundaries of existing electoral districts in particular the boundaries of the existing electoral districts of Mallee, Heysen, Murray, Victoria, Millicent and Mount Gambier.

3. Failed to have sufficient regard to the topography of the areas within which it drew electoral boundaries.

4. Failed to have sufficient regard to the feasibility of communication between electors affected by its redistribution in particular electors in the electoral district of Mallee thereby defined and their parliamentary representatives in the House of Assembly of the State of South Australia.

By reason of the matters aforesaid the said Commission failed duly to observe the requirements of Section 83 of the said Act (and in particular subsections (a), (c), (d) and (e) thereof) and did not (when it was practicable so to do) have regard to the matters aforesaid. The order of the Commission was not in accordance with the evidence and submissions before it.

DATED this 3rd day of September, 1976.

(sgd.) G.V. Smith
Appellant

The address at which notices and other documents

may be left for or posted to the Appellant is C/- Messrs. Piper, Bakewell & Piper, 80 King William Street, Adelaide, Solicitors for the Appellant.

NOTE: The original of this Notice must be filed at the Master's Office, Supreme Court House, Victoria Square, Adelaide, and a copy served on the Respondent Commission within one month of the publication of the Commission's order in the Government Gazette.

THIS NOTICE OF APPEAL is filed and served by PIPER, BAKEWELL & PIPER of 80 King William Street, Adelaide. Solicitors for the Appellant.

Notice of Appeal Against Order of Electoral Districts Boundaries Commission - Gladys Viola Smith, dated the 3rd day of September 1976

(Continued)