

## Griffith – The Lawyer

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### I

Of all of the Queensland lawyers of the 19<sup>th</sup> century, we know much more about Griffith than anyone else. For his work in court, we have the benefit of the very detailed newspaper reports of the time, which record virtually all the cases in which Griffith appeared as a barrister. For his daily life in practice, we have the private diaries which Griffith maintained throughout his life. For some insight into his analytical approach as a young lawyer, we are particularly fortunate to have a sample of about 180 of Griffith's written legal opinions which extend over his whole career at the private bar. These opinions were provided to two early Queensland law firms, which eventually evolved into the firm of Feez Ruthning (and then Allens) – and are preserved in that firm's opinion books, which have been kindly donated to the Supreme Court Library.

This material provides the best evidence we have to understand the nature of legal practice during this period. More significantly, it provides important clues to help us understand how Griffith, as an immigrant child from very humble circumstances, developed the formidable skills – and the public respect – which facilitated the achievements of his later life.

### II

Griffith's legal career began at the age of 17, in 1863, when he commenced a period of three years articles of clerkship in Brisbane.

1863 was only the fourth year after Queensland's separation. At the time, Brisbane was quite a small town - with a population of only about 12,000. It was about the same size as present-day Warwick. There were only two Judges to serve the whole of Queensland – Cockle CJ and Lutwyche J. There was no District Court. Queensland had only 8 practising barristers, all of whom were based in Brisbane, and only 24 practising solicitors, who were mostly distributed across the six main towns of the Colony.

At the time, Queensland essentially had an agricultural economy, based on wool production. On the civil side, the legal work was largely concerned with conveyancing, wills, debt recovery, partnership relationships and the like. On the criminal side, the work largely stemmed from drunkenness and theft – with only a handful of capital offences committed each year.

In the world of law and politics, the focus was upon the former Convict Barracks which stood in Queen Street, Brisbane, between George and Albert Streets. It was a long building, with two wings separated by an archway. The Supreme Court was based in the former chapel of this complex, which was located above the archway. The two Parliamentary chambers were located on the two levels of the northern wing.

Whilst Griffith was only 17 when he commenced his articles, he had already completed an Arts degree at the University of Sydney. This was quite unusual. It was a little unusual for a student to have completed three years university study by the age of 17. But it was very unusual for an articled clerk in Queensland to have any university education at all. Until the University of Queensland was established in 1909, on the 50<sup>th</sup> anniversary of Queensland's

foundation, Queensland had no local universities. Whilst it was possible for aspiring Queensland lawyers to go away to university at Sydney or Melbourne – only a handful did this during the 19<sup>th</sup> century. Griffith was one of the fortunate few. So he came to the legal profession with a sound academic training, not in law, but in rigorous thinking across a range of disciplines (including mathematics).

### III

When he returned from Sydney, Griffith moved back into the family home at the northern end of Adelaide Street in Brisbane – and started articles of clerkship with Arthur Macalister. Obtaining good quality articles of clerkship was critical for any aspiring lawyer. Articles were effectively an apprenticeship, in which, depending upon the circumstances, the clerk could either find themselves spending years undertaking menial tasks – or could find themselves getting broad experience, and developing high quality legal skills, at an early stage in their career.

For Griffith, his articles seem to have fallen into the latter category. He was articled to Arthur Macalister, who was one of Queensland's leading solicitors. Macalister was the first solicitor to establish a viable legal practice at Ipswich – which was then the commercial gateway to the Darling Downs. However, Macalister's real interest was in politics. He was elected to the first Queensland Parliament and, within a short time, was elevated to ministerial office. In fact, he became Premier of Queensland during the course of Griffith's articles. In 1863, because of these political interests, Macalister moved from Ipswich to Brisbane – and relocated his practice here – engaging Griffith as his articulated clerk. With a master who was only available some of the time, Griffith obviously bore considerable responsibility for the practice.

Griffith was also fortunate, during this period, to have been awarded the Mort Travelling Scholarship by the University of Sydney. This allowed him to take a year away from articles to travel through Europe and to broaden his experience and thinking about the world. This was another unique opportunity for a young Queenslander. So by 22, Griffith was already a young man of considerable skill and experience.

### IV

In 1867, at the age of 22, Griffith commenced practice at the Queensland bar. His chambers were based in the recently opened Town Hall in Queen Street, Brisbane – near the former Convict Barracks. The Town Hall was a surprisingly elegant building. It was designed to include a large hall on the upper floor – for Council meetings and for concerts – and with professional offices on the lower floors. This building became the home of the Queensland bar for a number of years, until a new court complex was built at 300 George Street in 1879, after which most barristers moved their chambers to nearby buildings.

Griffith practised from chambers in the Town Hall for a total of nine years as a junior. But legal practice at that time was utterly unlike our own. Not only were there no computers, there was no electricity or even typewriters. All briefs, pleadings and opinions were handwritten. There were no local law reports published – with the profession depending upon written English law reports arriving by ship. The colonial statutes of Queensland were collected in only two volumes. As a consequence, briefs were short; trials were short; and, as

we see from Griffith's legal opinions, they were short too – with only a page or two of principled analysis of the key issues.

The timing of Griffith's decision to come to the Bar could not have been better.

The year 1867 was a turning point in Queensland's economy, as it was the year that payable quantities of gold were discovered at Gympie. This discovery triggered a shift in the economy towards mining and secondary industries. This, in turn, called for significant capital investment and prompted the increasing use of company structures. It also led to a rise in commercial disputes concerning mining titles, construction contracts and arrangements between venturers. This significantly broadened the range of issues to be considered by Queensland lawyers. It also involved extensive cross-border transactions, in which the legal and commercial difficulties of conducting dealings with other Australian colonies became apparent.

This period was also a time of technological change and significant investment in infrastructure. This involved programmes for the building of roads, railways, bridges, and gas and water reticulation systems. For government lawyers, these programmes gave rise to challenging legal issues, as they sought to create an appropriate statutory framework for these initiatives. They also gave rise to legal issues concerning the funding of these projects, and the negotiation, management and resolution of disputes under construction contracts.

This was also an era of significant legal reform. The English, in particular, were reviewing and reforming many aspects of their legal system. It was a time of procedural reform, most notably through the Judicature Acts. It was also a time of widespread substantive reforms. Common law doctrines which produced unjust outcomes, such as the doctrine of common employment which denied to a worker the ability to sue his employer for injuries caused by the negligence of a fellow worker, were gradually being abolished or updated to suit modern conditions. Again, for those involved in political life of Queensland and as government lawyers, this era provided a great opportunity to reshape the law.

Finally, this was an era where the court system of Queensland was rapidly expanding to meet the needs of a growing population. The District Court was established in 1866. This development immediately expanded the Queensland judiciary from only two Judges to five. It also allowed court sittings to be held across regional Queensland. This, in turn, facilitated a significant expansion of the volume and kind of work undertaken by the legal profession.

## V

Griffith was perfectly placed to take advantage of these developments. He was clever, with a raw legal ability which was well beyond the skills of his contemporaries. He was particularly industrious – regularly working late into the night, until a newly opened flask of whisky had been fully consumed. He was confident and decisive in his views. He was also driven by an irrepressible urge to identify and overcome shortcomings in the systems and organisations in which he operated.

Griffith quickly became the most sought-after barrister in Queensland. He also received a significant amount of government work from an early point in his career. Initially, this was through Brisbane Municipal Council. Then, in 1872, Griffith commenced a parallel career -

which seems so odd to modern eyes – as both a member of the Queensland Parliament (serving significant terms as Attorney-General and Premier) and as a barrister with a busy private practice. This continued for 21 years, from 1872 until his appointment as Chief Justice in 1893.

During this period, the Queensland public service was very small. Accordingly, Griffith's public role, particularly as Attorney-General, was not only of a political character. It included giving legal advice to the government, driving law reform, drafting legislation and appearing for the Colony in many significant matters in court (including significant criminal prosecutions). The years of experience of this kind help to explain why Griffith had the respect of others, not only in Queensland but across other Colonies.

Griffith took silk at age of 30 in 1876. He then continued in practice until the age of 47, when he became Chief Justice. It is impossible to single out notable cases from his era as a silk, as Griffith's name dominates the law reports. But a very tangible measure of just how highly he was regarded can be seen in the special arrangements which were made to induce him to take on the role of Chief Justice of Queensland. In 1892, Parliament passed the *Chief Justice's Salary Act* – to increase the previous salary of £2500 to £3500, just to attract Griffith to the job. This reform which was promptly repealed as soon as Griffith left Queensland.

The Parliament's faith in Griffith was amply repaid. During his tenure on the Supreme Court, Griffith presided over one of the strongest appellate courts in Australia. He also drafted the Criminal Code, and new procedural rules for both civil and criminal matters in the Supreme Court.

It was his combination of intellect, energy, zeal and breadth of experience which made Griffith a unique figure in colonial Australia.

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