

The Griffith Opinion Books

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I

The death of Sir Samuel Walker Griffith² on 9 August 1920 produced a wave of striking tributes from all parts of the Australian federation³. The Judges of the Supreme Court in Brisbane adjourned their sittings for a day as a mark of respect⁴. The High Court held its own brief memorial sitting in Sydney, in which the Chief Justice observed of Griffith that:

“Many will agree in thinking that he was in many ways the greatest man Australia has produced, but be that as it may, none can deny that by his lifelong public service he established the right to the lasting gratitude of the people of this country.”⁵

Griffith was born on 21 June 1845 at Merthyr Tydfil in Wales. He was the second of the nine children born to a devout and dedicated Congregational minister (Rev. Edward Griffith) and his wife (Mary Griffith née Walker).

¹ This paper is the first of a series of studies to be undertaken by the Queensland Supreme Court Library of an extensive collection of counsels’ opinions held by the Queensland firm of Feez Ruthning. I would like to thank Peter Allen and the other former partners of Feez Ruthning (now Allens Linklaters) for their foresight in preserving this unique record of Australian legal history and for their generosity in making it available to the Queensland Supreme Court Library for research purposes. I would also like to thank Helen Jeffcoat, Yvette Simmonson, Courtney Coyne and the staff of the Queensland Supreme Court Library for their ongoing work in preserving, digitising, transcribing, analysing and investigating the accessible contents of this material. I am also very grateful to Mr Greg Cooper, Crown Solicitor, for allowing the Supreme Court Library confidential access, for the purposes of this study, to the collection of Griffith opinions which are held by the State, but which remain subject to legal professional privilege.

² The most extensive account of Griffith’s life, written from an historian’s perspective, remains Roger Joyce’s *Samuel Walker Griffith* (UQP, 1984). See also R Joyce “Sir Samuel Walker Griffith (1845-1920)” in *Australian Dictionary of Biography* Volume 9 (MUP, 1983). For a personal memoir of Griffith and his legal achievements, written by a distinguished lawyer who was once one of Griffith’s associates, see A.D.Graham *The Life of Sir Samuel Griffith* (Powells & Pughs, 1939). For assessments of Griffith’s judicial work, see Sir H.T. Gibbs “Samuel Walker Griffith” in T.Blackshield, M.Coper & G.Williams (Eds) *Oxford Companion to the High Court of Australia* (OUP, 2001); Sir H.T. Gibbs and P.A.Keane “Sir Samuel Griffith” in M.White and A.Rahemtula (Eds) *Queensland Judges on the High Court* (SCL, 2003); and M. White and A. Rahemtula (Eds) *Sir Samuel Griffith: The Law and the Constitution* (LBC, 2002).

³ Lengthy tributes appeared in all major Australian newspapers, including the *Brisbane Courier*, 10 August 1920 at 7; *Sydney Morning Herald*, 10 August 1920 at 6 and the *West Australian*, 10 August 1920, at 6.

⁴ *Brisbane Courier*, 10 August 1920, at 7.

⁵ Knox CJ, Ceremonial sitting of the High Court, 10 August 1920, reported in *Sydney Morning Herald*, 11 August 1920 at 12.

In 1853, at the age of eight, Griffith sailed with his family to Australia, to allow his father to assist in the work of the Colonial Missionary Society. This work brought the family to Ipswich in 1854. By this time, Griffith had shown promise as a student. With the support of various scholarships, he completed his schooling at Maitland (1856-59) and then at the University of Sydney (1860-63). On 11 May 1863, at the age of only 17, he returned to Queensland to commence his articles of clerkship under the tutelage of a prominent Ipswich solicitor, Arthur Macalister⁶. At the completion of his articles in 1867, at the age of 22, he obtained admission to the Queensland Bar⁷.

Griffith's career at the Queensland Bar spanned 25 years (1867-1893). Upon commencing practice, he joined the small group of barristers who practised from chambers in the Brisbane Town Hall⁸. This building stood on the western side of Queen Street, between George and Albert Streets, adjacent to the former Convict Barracks in which the Supreme Court and Queensland Parliament were then based⁹. On 11 May 1876, at the age of 30, he became the fourth member of the Queensland Bar to take silk¹⁰. About 10 years later, in October 1886, Griffith moved his practice to Lutwyche Chambers¹¹. These were new premises, which had been built on the eastern side of Adelaide Street (near the corner of George Street), to provide the legal profession with accommodation closer to the new Supreme and District Courthouse in George Street¹². In 1893, at the age of 47, Griffith's career at the Bar ended when he was appointed Chief Justice of Queensland.

⁶ Macalister was one of the leading legal and political figures in early Queensland. After playing an active role in the movement for Queensland's separation, he was elected to Queensland's first Legislative Assembly. At the commencement of Griffith's articles, Macalister was dividing his time between practice as a solicitor and serving in Herbert's government as Secretary for Land and Works. By the end of Griffith's articles, Macalister had succeeded Herbert and served two short terms as Premier of Queensland (1866, 1866-67). When Griffith commenced practice at the Bar, Macalister's firm was one of his early supporters. See Paul D Wilson "Arthur Macalister (1818-1883)" in *Australian Dictionary of Biography* Vol 5 (MUP, 1874).

⁷ Griffith was admitted to the Bar on 14 October 1867, at a sitting of the Full Court comprising Cockle CJ and Lutwyche J. His admission was moved by Charles Lilley QC. See *Brisbane Courier*, 15 October 1867, at 2. At the time, the Queensland Bar comprised fewer than 20 practising members (including only two silks): see *Pugh's Almanac 1868* at 75.

⁸ The Town Hall, which was opened in 1864, was designed to include professional offices. An early photograph of the façade of the Town Hall (which was demolished in 1937) can be seen in JD McKenna *Supreme Court of Queensland: A Concise History* (UQP, 2012) at 61 ("*Concise History*"). Macalister was one of the solicitors who kept an office in the building: see, eg, *Brisbane Courier*, 7 October 1864, at 1. This seems to have been the office where Griffith was based during the latter period of his articles. When Griffith commenced practice at the Bar, he began by sharing chambers in the Town Hall with George Paul (later a Judge of the District Court). All Griffith's early opinions are signed "Town Hall Chambers": *Concise History*, at 68.

⁹ Plans and early photographs of the Convict Barracks can be seen in the *Concise History* at 29, 42 and 44.

¹⁰ Roll of Her Majesty's Counsel, *Concise History* at 47.

¹¹ This appears from the Griffith Opinions which, from November 1886, are signed "Lutwyche Chambers".

¹² Lutwyche Chambers, which opened in 1885, stood at 11/13 Adelaide Street. It was a two-storied building which accommodated, on the ground floor, the solicitors' firm of Macpherson, Miskin & Feez (later Feez Ruthning & Baynes) and three barristers' chambers, with chambers for five more barristers

For much of his 25 years in practice at the Bar, Griffith was the pre-eminent counsel of his generation. For evidence of his dominance, one need only consult the law reports. In the first volume of published law reports in Queensland, the *Queensland Law Reports* (1876-78), Griffith was recorded as appearing in 36 of the 44 reported cases. Griffith's prodigious court work ranged over all fields of the law – from criminal law to constitutional law - and was sourced from a wide cross-section of Queensland solicitors.

What is truly remarkable, however, is that this dominant practice at the Bar could be maintained at the same time as Griffith pursued a parallel life at the summit of Queensland politics. Griffith was first elected to the Legislative Assembly in 1872 (aged 26). He then served as Attorney-General (1874-1878), Leader of the Opposition (1879-1883), Premier (1883-1888), and after a short period in opposition, a second term as Premier and Attorney-General (1890-1893).

To meet the demands of this parallel life, Griffith's working week often exceeded 80 hours¹³, with his efforts extending long into the night:

“he could not, accordingly to his own description, work comfortably at night until the household had retired. He would then set his table just as he wanted it, with everything in its exact place. He began work with a fresh bottle of whisky beside him. When the bottle was empty he went to bed.”¹⁴

The duties of an Attorney-General during this period were onerous. At the time, the whole of the Department of Justice comprised only about 11 staff (from the Crown Solicitor down to the messengers) – with no office of Parliamentary Counsel¹⁵. As well as undertaking the usual parliamentary and administrative responsibilities of a Minister of the Crown, the Attorney-General was required to draft all significant legislative reforms and appear as counsel for the Crown in all major court proceedings (including criminal prosecutions).

Griffith relished each of these public duties. From the time he entered Parliament – even when in opposition – Griffith was a prolific source of legislative reforms¹⁶. As in his practice at the Bar, his enthusiasm and interest was not narrowly focussed. His interest in the reform of technical aspects of the law¹⁷ was matched by his interest in social matters, avidly reading Karl Marx¹⁸ and advancing progressive reforms of industrial laws¹⁹.

on the first floor. See *Pugh's Almanac 1915* at 479. A photograph showing Lutwyche Chambers in the 1950s appears in the *Concise History* at 159 (far right),

¹³ Joyce, *op cit*, at 90.

¹⁴ AB Piddington *Worshipful Masters* (A&R, 1929) at 234.

¹⁵ See *Pugh's Almanac 1893*, “Department of Justice”, at 128

¹⁶ In his first two years in Parliament, Griffith drafted and introduced the *Telegraphic Messages Act 1872 (Qld)* and the *Equity Procedure Act 1873 (Qld)*: Joyce, *op cit*, at 31-32.

¹⁷ Griffith, as Attorney-General, was responsible for the introduction to Queensland of the most significant reforms in court procedures of this era: *Judicature Act 1876 (Qld)*.

¹⁸ Joyce, *op cit*, at 150.

¹⁹ For example, the legalisation of trade unions (*Trade Unions Act 1886 (Qld)*).

From his life in politics, perhaps Griffith's most enduring achievement was as one of the fathers of Australian federation. In 1883, as Premier, he encouraged the colonial governments to form a Federal Council – then drafted the statute which became the *Federal Council of Australasia Act 1885 (Imp)*²⁰. When the colonies later gathered for the National Australasian Convention in Sydney in 1891, it was Griffith who assumed principal responsibility for the drafting of a constitution which was capable of enduring the scrutiny of Australia's leading legal and political figures²¹. In the words of Sir Alfred Deakin, the Constitution "as a whole and in every clause bore the stamp of Sir Samuel Griffith's patient and untiring handiwork, his terse, clear style and force of expression"²².

A more tangible measure of Griffith's pre-eminence as a lawyer appears from the circumstances which led to his appointment as Chief Justice. To induce him to leave the Bar and take on a judicial role, a special Act of Parliament was passed to increase the salary of the Chief Justice by 40% - from £2500 to £3500²³. This unprecedented inducement – which was immediately reversed for his successor²⁴ – was rewarded by Griffith's remarkable achievements during his ten years as Chief Justice (1893-1903). During this period, Griffith not only led the court to a new level of excellence, but also continued to pursue his drive for law reform – being principally responsible for the massive task of drafting a *Criminal Code*, new *Rules of the Supreme Court* and new *Criminal Practice Rules*²⁵. Upon the establishment of the High Court of Australia in 1903, Griffith was appointed its first Chief Justice. He served in this position for the next 16 years (1903-1919). After suffering a stroke, Griffith died at the age of 75 in 1920.

There are many lawyers and Judges who were pre-eminent in their era, but whose writings are now little more than historical curiosities. As Sir Harry Gibbs has noted, however, Griffith cannot be so characterised²⁶. He is perhaps the only Australian Judge of the 19th century whose observations are still regularly followed and applied by modern Australian courts²⁷. These judicial writings, however, derive from only the last 25 years of his working life. What of the first 25 years? Whilst Griffith's papers are extensive, they do not include a collection of his opinions as a barrister or as Attorney-General. Nor do the records of the Department of Justice, which are held by the Queensland State Archives, contain more than a scattering of Griffith's opinions²⁸. In these circumstances, after the

²⁰ Joyce, *op cit*, at 90.

²¹ The various drafts which were produced, in quick succession, by Griffith are collected in J. Williams *The Australian Constitution: A Documentary History* (MUP, 2005).

²² A. Deakin *The Federal Story* (MUP, 1963) at 52.

²³ *Chief Justice's Salary Act 1892 (Qld)*.

²⁴ *Chief Justice's Salary Act 1902 (Qld)*.

²⁵ BH McPherson *The Supreme Court of Queensland* (Butterworths, 1989) at 191.

²⁶ Sir H.T. Gibbs "Sir Samuel Griffith" in M. White and A. Rahemtulla (Eds) *Queensland Judges on the High Court* (SCL, 2003) at 33.

²⁷ Griffith CJ's famous judgment in *Butt v McDonald* (1896) 7 QJL 68, for example, has been referred to more than 15 times by Australian superior courts since 2010.

²⁸ More significant Griffith opinions, which remain the subject of legal professional privilege, are held in the office of the Crown Solicitor.

passage of more than 100 years, it may have been feared that all of the remaining opinions had been lost. It was in this context that the Feez Ruthning Opinion Books came to light.

II

Feez Ruthning (1911-1996) was one of the leading law firms in Queensland²⁹. On 1 December 1911³⁰, the firm was created through a merger of two of the State's earliest legal practices, one founded by Robert Little (1846) and the second by Peter Macpherson (1865). Each of these original practices had developed an enviable array of clients and commanded a significant share of the civil court work in Queensland. They had also developed a close relationship with many of the leading members of the early Queensland Bar, including Griffith. This relationship was not confined to appearance work. Written opinions were regularly sought from counsel on matters of difficulty.

The first of the original legal practices was founded by Robert Little³¹. Little was born in Londonderry, Ireland, in 1822. At the age of 23, after qualifying as a solicitor, he emigrated to New South Wales. On 23 June 1846, he was admitted to practice in the Supreme Court of New South Wales³². In December 1846, he commenced practice in Brisbane from his home, a small cottage which stood on the north-western corner of George and Adelaide Streets³³. At that time, only four years after the Moreton Bay district had been opened for free settlement, the population of this district comprised only about 2300 colonists³⁴. Little appears to have been the third solicitor to commence practice in Brisbane³⁵, but his practice was the first to survive and prosper. From 1857, when a resident Supreme Court Judge (Mr Justice Milford) was first appointed to Moreton Bay, Little was engaged to serve (on a part time basis) as the Crown Solicitor for the Moreton Bay District. These arrangements continued after Queensland's foundation in 1859, with Little becoming Queensland's first Crown Solicitor.

In 1860, Robert Little entered a partnership with a newly arrived English solicitor, Mr Eyles Browne³⁶. They began to practice under the name Little & Browne from offices in the former convict barracks

²⁹ For a history of the firm, by a long-serving senior partner, see GO Morris *Feez Ruthning: The First 100 Years* (2004) (<http://www.lexscripta.com/articles/FR.html>).

³⁰ Public Notice, *Brisbane Courier*, 4 December 1911. The merged firm was initially known as Feez, Ruthning and Baynes.

³¹ Ross Johnson "Robert Little (1822-1890)" *Australian Dictionary of Biography* Vol 5 (MUP, 1974). A photography of Little and his family home "Whytecliffe" appears in the Concise History at 34.

³² Robert Little's admission was moved by the Attorney-General, who introduced him to the Court as a "gentleman of respectability": *Sydney Morning Herald*, 10 August 1846, at 2.

³³ *Brisbane Courier*, 21 January 1890, at 4.

³⁴ Queensland Government Statistician *Historical Tables Demography 1823-2008* (<http://www.oesr.qld.gov.au/products/tables/historical-tables-demography/index.php>)

³⁵ The 1846 editions of the *Moreton Bay Courier* suggest that there were earlier practices commenced by John Ocock and Thomas Adams.

³⁶ Nan Phillips "Eyles Irwin Caulfield Browne (1819-1886)" *Australian Dictionary of Biography* Vol 3 (MUP, 1969).

in Queen Street³⁷, with Browne attaining wider prominence as a Member of the Legislative Council (1863-1882) and as one of the proprietors of the *Brisbane Courier* (1873-1886). As well as acting in court proceedings for the State and for Brisbane Newspapers, the firm acquired a number of banking clients including the Bank of New South Wales.

As the pre-eminent law firm in Queensland – and a firm with a close family connection to another new barrister in Brisbane³⁸ - Little & Browne was not quick to brief the young Samuel Griffith. In 1869, the firm briefed Griffith as the second junior (to Lilley and Harding) in the winding up of the Bank of Queensland³⁹. However, even after Griffith became Attorney-General (1874) and took silk (1876), he seems not to have become one of this firm's preferred counsel until the 1880s⁴⁰. From that period until his appointment as Chief Justice, however, Griffith's opinions provide the greatest contribution to the Opinion Books of the firm⁴¹.

During the 1880s, leadership of the firm passed to Mr HLE Ruthning⁴². Ruthning was born in Paderborn, Germany, in 1841. He emigrated to Adelaide with his family at the age of eight. As a young man, he came to Brisbane to work as a bank officer, before joining Little & Browne as an articled clerk. He was admitted as a solicitor, at the age of 35, on 11 March 1876⁴³. In 1879, he was admitted to the partnership⁴⁴, and within a short time, he found himself the sole principal of the firm. This occurred when Little, in 1882, retired from private practice to devote all his energies to his official role as Crown Solicitor⁴⁵ and Browne was forced by ill-health to retire in 1883⁴⁶. By this time, the firm had moved from the Convict Barracks to new offices in Queen Street, which were a little closer to George Street⁴⁷. Ruthning had also written one of the few Queensland legal texts from this period, a commentary on the new Bills of Exchange Act⁴⁸.

³⁷ *Brisbane Courier*, 21 January 1890, at 4.

³⁸ George Harding (later Harding J) who arrived in Brisbane in 1866 and Eyles Browne were married to sisters.

³⁹ *Brisbane Courier*, 20 November 1869, at 5. And see *re The Bank of Queensland Limited* (1870) 2 QSCR 113.

⁴⁰ Griffith's relationship with the firm appears to have become closer after Harding was appointed to the Supreme Court in 1879. See, for example, *King & Sons v Co-operative Butchering Company*, *Brisbane Courier*, 12 August 1879 at 3; and *Spent v Australasian Joint Stock Bank*, *Brisbane Courier*, 8 April 1880 at 3.

⁴¹ The position prior to 1887 remains uncertain because the Opinion Book from this period remains too fragile to inspect. In the period from 1887 to 1993, however, 17 of the 49 opinions from counsel are from Griffith.

⁴² For an outline of Mr Ruthning's life, see his obituary in *The Queenslander*, 7 October 1916, at 40.

⁴³ Supreme Court of Queensland, *Roll of Solicitors*, 11 March 1876.

⁴⁴ Public Notice, *Brisbane Courier*, 27 January 1879, at 1.

⁴⁵ Public Notice, *The Queenslander*, 18 November 1882, at 692.

⁴⁶ *Brisbane Courier*, 3 October 1883, at 1.

⁴⁷ *Brisbane Courier*, 21 December 1881, at 1.

⁴⁸ HLE Ruthning *Bills of Exchange Act 1884* (Watson Ferguson, 1884)

For a few years, Ruthning practised in partnership with Mr WJ Byram (1888-1893)⁴⁹, before forming with Magnus Jensen the more enduring firm of Ruthning & Jensen (1893-1911)⁵⁰. In 1899, the practice relocated from Queen Street to premises adjacent to the Supreme Court, on the southern side of George Street (between Queen & Adelaide Streets)⁵¹, with Ruthning's son (Mr APT Ruthning) commencing work with the firm as an employed solicitor⁵². By 1911, however, this arrangement seems to have generated some disharmony. The firm was dissolved, with Jensen leaving the practice to form the firm of Morris, Fletcher and Jensen⁵³, and the new firm of Ruthning & Co (comprising Messrs HLE and APT Ruthning) preparing for an imminent merger into the new firm of Feez, Ruthning and Baynes.

The second of the original practices was founded in 1865 by Peter Macpherson⁵⁴. Macpherson was a little older than Griffith. He was born in Arbroath, Scotland, in 1841, and came to Sydney with his family at the age of 14. After completing his articles of clerkship, he was admitted as a solicitor in Sydney in 1864. The following year, Macpherson moved to Brisbane and established his own practice in Queen Street⁵⁵ – just two years before Griffith commenced at the Bar (1867). Whilst Macpherson was known more for his geniality than his legal brilliance⁵⁶, he soon established a very strong legal practice. A key client was the Brisbane Municipal Council – with Macpherson serving as the City Solicitor for almost 50 years⁵⁷. Over time, the firm gathered a number of banking clients, including the Union Bank and the Australian Joint Stock Bank.

Unlike Little & Browne, this firm began to regularly brief Griffith almost immediately after he commenced practice⁵⁸. Thereafter, as the reports of court proceedings from this era record, Griffith became the firm's counsel of choice⁵⁹. As a consequence, Macpherson and Griffith became the preferred legal advisers to the Brisbane Municipal Council for much of Griffith's life in practice⁶⁰.

⁴⁹ Public Notices, *Brisbane Courier*, 20 October 1888 at 11 and 2 February 1893 at 1. For a brief account of Mr Byram's career, see his obituary in the *Brisbane Courier*, 18 March 1922 at 12.

⁵⁰ Public Notices, *Brisbane Courier*, 29 October 1893 at 3 and 4 December 1911 at 2. For a brief account of Mr Jensen's career, see his obituary in *The Queenslander*, 22 May 1915, at 15.

⁵¹ *Brisbane Courier*, 10 October 1899, at 8.

⁵² Supreme Court of Queensland, *Roll of Solicitors*, 5 December 1899.

⁵³ *The Queenslander*, 22 May 1915, at 15.

⁵⁴ For a brief outline of Macpherson's career, see his obituary in the *Brisbane Courier*, 13 September 1913, at 6.

⁵⁵ Supreme Court of Queensland, *Roll of Solicitors*, 8 Sept 1865; *Brisbane Courier*, 22 September 1866 at 3.

⁵⁶ *Cairns Post*, 25 September 1913, at 2.

⁵⁷ *Brisbane Courier*, 13 September 1913, at 6.

⁵⁸ See, for example, *Hugh v Cribb*, *Brisbane Courier*, 15 December 1868 at 2.

⁵⁹ The first reported case is *re Loudon* (1870) 2 QSCR 70, when Griffith (instructed by Macpherson) appeared unsuccessfully in the Full Court against Harding (instructed by Little & Browne).

⁶⁰ Reported cases include *Hobbs v Municipality of Brisbane* (1876) 4 QSCR 214 and *Brisbane Municipal Council v Watson* (1883) 1 QLJ 127. In the Opinion Books of this firm, numerous opinions were prepared by Griffith in matters for the Council.

Macpherson's practice steadily grew. For a time, he practised in partnership with Mr Maurice Lyons (1870-1873). He also wrote two early Queensland works on the subject of insolvency⁶¹. After acting for many years on the instructions of Mr WH Miskin, the Official Assignee, Macpherson engaged Miskin as an articled clerk (1878) then brought him into the firm (1884)⁶². In 1885, the firm moved from the National Mutual Buildings, at 150 Queen Street⁶³, to offices on the ground floor of Lutwyche Chambers⁶⁴. Shortly afterwards, the newly admitted Adolph Feez began with the firm⁶⁵.

Adolph Feez was the older brother of one of the rising stars of the Queensland Bar, Arthur Feez, whose chambers were across the hallway from the offices of Macpherson & Miskin in Lutwyche Chambers⁶⁶. The Feez brothers were grandsons of Mr Justice Milford, but of quite different dispositions. Arthur Feez was a studious and cultured man, who obtained a degree in law from the University of Sydney, before being admitted to the Queensland Bar on 6 September 1881. He went on to take silk (1909) and become one of the leaders of the Bar. Adolph Feez, on the other hand, was of a more adventurous disposition. Rather than undertake further studies, he worked with a survey party in outback Queensland for a number of years, before undertaking articles of clerkship with a number of regional firms. Adolph Feez represented Queensland in rugby and was one of the founders of the Queensland Lawn Tennis Association.

Whilst Adolph Feez was admitted to practice some four years after his younger brother, he soon became a partner of the firm of Macpherson, Miskin & Feez on 7 December 1886⁶⁷. The next 12 years were very successful for this practice. As a firm with a strong banking and insolvency practice, the economic collapse of the late 1880s resulted in a heavy involvement in numerous pieces of litigation – often with the assistance of Griffith or Arthur Feez⁶⁸. In 1898, however, there was a public falling out between Macpherson and Feez, with a receiver being appointed to the practice⁶⁹.

⁶¹ P. Macpherson *The Insolvency Act 1874* (Watson, 1874); G. Harding & P. Macpherson *The Acts and Rules Relating to Insolvency* (Watson Ferguson, 1887).

⁶² From 1884, the firm became known for a time as Macpherson and Miskin. However, in 1891, Miskin left the firm in unusual circumstances. He was reported to have left the Colony "without leaving any indication of his intended movements": *The Queenslander*, 30 January 1892 at 234. After a time, he returned to practice in Rockhampton, where he remained until his death in 1913: *Rockhampton Morning Bulletin*, 15 October 1913, at 6.

⁶³ *Brisbane Courier*, 20 April 1885, at 8.

⁶⁴ *Brisbane Courier*, 2 April 1885, at 2.

⁶⁵ Feez was admitted as a solicitor on 1 December 1885: *Brisbane Courier*, 2 December 1885, at 5. His appearances, as a solicitor from the offices of Macpherson and Miskin, begin to be mentioned in 1886: eg *Brisbane Courier*, 11 May 1886, at 4.

⁶⁶ See JCH Gill "Adolph Frederick Feez (1854-1944)" and "Arthur Herman Feez (1860-1935)" *Australian Dictionary of Biography* Vol 8 (MUP) 1981. And see *Brisbane Courier*, 17 October 1944, at 4.

⁶⁷ *Brisbane Courier* 16 December 1886 at 7.

⁶⁸ As solicitor for the Brisbane Municipal Council, the firm was also involved in two cases which went on to the Privy Council: *Martin v Municipality of Brisbane* (1893) 5 QLJ 3 (FC); [1894] AC 249 (PC); *Clark & Fauset v Municipality of Brisbane* (1896) 6 QLJ 131 (FC – PC unreported *Brisbane Courier*, 9 April 1896, at 6).

⁶⁹ *Brisbane Courier*, 14 February 1898, at 4.

In the result, Feez was left with the firm's premises in Lutwyche Chambers (and associated materials such as the Opinion Books), but some major clients (including the Brisbane Municipal Council) left with Macpherson. In the years which immediately followed, Adolph Feez's practice appeared to falter for a time. By 1906, however, the practice had sufficiently recovered for Arthur Baynes to join Feez as a partner.

In 1911, these two firms – Ruthning & Co and Feez & Baynes – merged to form the firm of Feez, Ruthning and Baynes. The firm continued to conduct its practice from Lutwyche Chambers until 1925, when it moved to the 6th Floor of the T & G Building on the north-eastern corner of Queen and Albert Streets. With two subsequent name changes (to Feez Ruthning & Co in 1927 and to Feez Ruthning in 1986) and various changes of offices, this Queensland practice continued until it became part of the national practice of Allens Arthur Robinson in 1996.

Within the library of this thoroughly modern firm, an object of both veneration and curiosity was a collection of some 30 bound volumes of the firm's Opinion Books. These volumes – five of which were fragile volumes dating from the 19th century - contained the collected opinions of the leading counsel retained by the firm throughout its history.

Conscious of their historic significance and increasingly fragile state, the firm began to explore options for their preservation. Legal concerns arose, however, about the propriety of depositing the confidential and privileged opinions of even historic clients with a public archive. These concerns could only be overcome by a special legislative measure. With the support and assistance of the Crown Solicitor, such a measure was put in place by an amendment to the *Supreme Court Library Act 1968 (Qld)* which came into force on 8 December 2005⁷⁰. This provision authorised the deposit of historic legal documents with the Library, and their use for historical or educational purposes.

On 30 August 2006, at a ceremony in the Banco Court of the former Supreme Court building, the Chief Justice of Queensland (Paul de Jersey CJ) accepted on behalf of the Supreme Court Library a deposit of the entire set of the Feez Ruthning Opinion Books. Whilst only those opinions which are more than 100 years old are presently available for research purposes, the remaining opinions are being preserved by the Library for future researchers, as they gradually fall into the realms of the historic.

III

There is no surviving account, from those involved in compiling the early Opinion Books, to answer the many questions which a modern researcher finds puzzling. When were the Opinion Books first compiled? Why were they compiled? How were they compiled? What were they used for in practice? Was the compilation of opinion books a common practice at the time? If so, what led this firm alone to continue the practice into the modern era? In seeking to answer these questions, we are left to draw inferences from the documentary record itself.

The Opinion Books from the period to 1912 comprise five, folio-sized volumes, bound in half calf. The spines identify the volumes, somewhat unhelpfully, as merely: "Counsel's Opinions No.1",

⁷⁰ *Supreme Court Library Act 1968 (Qld)* s.7A.

“Counsel’s Opinions No.2”, “Opinion Book No. 1”, “Opinion Book No. 2” and a patently later volume entitled again “Counsel’s Opinions No. 1”. None of the early volumes contains any notation which might identify the firm which created it. All the volumes are paginated and contain separate index pages, with the opinions indexed alphabetically by client name. One of the opinion books – Opinion Book No 1 – is too fragile for its contents to be inspected without the benefit of further conservation.

An examination of the contents of the Opinion Books – to the extent that is possible - is more revealing. In total, the Opinion Books contain approximately 600 opinions⁷¹. Almost all the opinions begin by identifying the client’s name, and end with the name of the author of the opinion and the date upon which it was provided. The list of authors includes virtually all the leading counsel who were in practice in Brisbane at that time, many of whom went on to notable judicial careers: Ratcliffe Pring, Charles Lilley and his son Edwyn Lilley, Samuel Griffith, George Harding, Patrick Real, James Garrick, Williams Shand, Charles Chubb, Virgil Power, Arthur Feez and Hugh Macrossan.

The four volumes which contain opinions from the nineteenth century are entirely handwritten. An examination of the handwriting suggests that the Opinion Books were prepared, over time, by a series of office clerks who copied by hand the text of the original opinions into these volumes.

This assessment is supported by what is known of Griffith’s work practices. Griffith prepared his legal work in his own handwriting, at an astonishing rate of about 75 words per minute⁷². Unfortunately, his handwriting was virtually illegible. Accordingly, when Griffith was a Judge, one of his associate’s tasks was to rewrite the judgments into legible form⁷³. It seems that a similar practice was adopted by Griffith at the Bar. From the one original Griffith opinion which has been located to date, it is apparent that the body of the opinion was written by a clerk onto plain paper, and then signed and dated by Griffith himself. It seems, from a notation on the backsheet of the opinion, that the opinion was issued by Griffith in duplicate. This would be consistent with a practice in which one of the originals would be prepared for the client and one for the solicitor’s file. It is clear that the Opinion Books are not a bound set of these original opinions, but rather an internally prepared set of copies of the original opinions, conveniently assembled by the firm for reference purposes.

To determine whether particular Opinion Books can be traced to a particular firm, a search of early newspaper reports of court proceedings is of assistance.

These very detailed reports identify the names of the clients and their legal representatives, and can often be matched to opinions held in the Opinion Books. This exercise is also illuminating in identifying the clients of each of the firms and the nature of their practice. Whilst this time-consuming exercise is only partially completed, it suggests that two of the early volumes (Counsel’s Opinions Vols 1 and 2) relate to the practice founded by Peter Macpherson (later Feez & Baynes) and that the other two early volumes (Opinion Books Vols 1 and 2) relate to the practice founded by

⁷¹ There are 456 opinions in the four volumes which are available for inspection, with an estimated 150 further opinions in Opinion Book No 1.

⁷² A.D.Graham *The Life of Sir Samuel Griffith* (Powells & Pughs, 1939) at 87, 93.

⁷³ Ibid.

Robert Little (later Ruthning & Jensen). The more recent volume (*Counsel's Opinions Vol 1*) spans the period in which the two firms merged (1911), but appears to have originated from Feez & Baynes.

To examine when these various Opinion Books were prepared, an examination of the date sequence of the opinions provides the most helpful guidance.

The first opinion book from the Macpherson practice begins with an opinion of Samuel Griffith dated 28 August 1885. The opinions which follow are not in strict chronological order, but broadly reflect a chronological sequence (with some older opinions interspersed) through the years to 1896. The second opinion book from this practice appears to begin as a continuation of the first. The initial opinions are from Edwyn Lilley and Arthur Feez in 1896. The remainder of the volume, however, is comprised largely of opinions from the period prior to 1885 collected in no particular order. Interspersed amongst these opinions are further opinions from the period 1896-1899. There is then a gap of more than 10 years in the sequence of opinions from this practice, until the more recent volume of *Counsel's Opinions* commences again with a chronological sequence beginning in 1908.

These indications suggest that, in this firm, the practice of compiling Opinion Books commenced in about 1885. This was about the time that Adolph Feez joined the practice, and its offices moved to Lutwyche Chambers, adjacent to the chambers of Arthur Feez. It is easy to understand why the firm might commence a practice of this kind at about this time. The early 1880s were a period of commercial expansion in the Queensland economy, with new ventures and new legislation introducing greater complexity to legal practice. Legal reference materials, however, did not keep pace with these developments. An initial attempt to publish a set of *Queensland Law Reports* had faltered (1876-1878), and a new *Queensland Law Journal and Reports* had only just begun (1881). Legal textbooks dealing with Queensland law were also rare. In these circumstances, the considered opinions of leading practitioners on points of recurring interest would have been of considerable value. In a firm which had long-standing clients such as the Brisbane Municipal Council, a reference set of opinions would also assist in ensuring that consistent advice was being provided over time and in helping to educate new practitioners in aspects of the law affecting these clients.

It is difficult to know what prompted the major effort, which appears to have been made in about 1896, to collect older opinions from the firm's files and copy them into the Opinion Books. This was a period of relative stagnation in the economy. It was also a period in which a falling out between Feez and Macpherson, and a potential division of the practice, was looming. Both factors may have combined to prompt an effort to assemble some of the firm's more valuable information. The lengthy lapse in activity in the Opinion Books after 1899 is also puzzling, but is consistent with the disruption to the practice which occurred during this period when Adolph Feez found himself in sole practice.

Without full access to the first volume of the Opinion Books from the Ruthning side of the practice, it is difficult to undertake a similar analysis of their origins and history. The second volume commences with an opinion of Patrick Real dated 24 February 1887. Thereafter, the volume continues in broad chronological order (with some earlier opinions interspersed) over the years to 1907. This suggests that the practice of compiling Opinion Books commenced on this side of the practice a little earlier, perhaps through the scholarly interests of Mr HLE Ruthning. In this more stable practice, the updating of the Opinion Books continued into the 20th century.

IV

Of all the 456 opinions which are available for inspection in the early volumes of the Feez Ruthning Opinion Books (1869-1912), about 40% (183) are the work of Samuel Griffith. This level of reliance upon Griffith is quite remarkable, particularly given that he was in practice for only about half of this period (1867-93).

Griffith's opinions span almost the whole of his career.

The earliest opinion was provided to Peter Macpherson on 6 April 1869⁷⁴, only about 18 months after Griffith commenced practice at the Bar. Griffith was then only 23 years old, and was briefed to consider a problem which had arisen in registering a mortgage under the newly-established Torrens system of land registration⁷⁵. The flow of opinions then continued steadily over the next 24 years, including the periods in which Griffith served as Attorney-General and Premier.

The last of the opinions was provided to Macpherson & Feez on 11 January 1893⁷⁶, only two months before Griffith was sworn in as Chief Justice of Queensland at the age of 47⁷⁷. This opinion again concerned a problem involving unregistered securities. More surprisingly, however, it fell within one of the rarest categories of counsel's opinions – the joint opinion in which a junior expressly dissents from the views of his leader. In this case, the junior counsel was Shand, who "whilst feeling some hesitation in differing from Sir Samuel Griffith" adhered to his view that an unregistered mortgage of livestock was unenforceable. Fortunately for Griffith, perhaps, these divergent views did not fall to be tested in court.

Griffith's opinions are quite revealing about the practices of the time.

First, and most strikingly, the opinions were very brief. Almost all the opinions are only between 400-600 words in length. Griffith achieved this economy of expression by avoiding long recitations of the facts or analysis of the authorities. The opinions conventionally begin with either a short statement of the key event which was the subject of dispute, or a succinct statement of the legal principle which was to be applied. The opinion then set out the key steps in the logic which led Griffith to a conclusion, which was almost invariably expressed with firmness and clarity⁷⁸.

This style presents challenges for modern readers who are unfamiliar with the background of the matter in question. However, it would have been refreshingly clear to the solicitor and client for

⁷⁴ *re Bridgeman* (1869).

⁷⁵ Queensland was one of the first colonies to adopt the Torrens system of land registration, with the enactment of the *Real Property Act 1861 (Qld)*.

⁷⁶ *Ex parte Bank of Australasia* (1893)..

⁷⁷ For an account of the swearing in, on 14 March 1893, see *Brisbane Courier*, 15 March 1893, at 5.

⁷⁸ A rare exception to this practice was, *re McManus's Will* (1885), where Griffith concluded "it is impossible to be confident as to the effect of the Will until the question has been decided by the Court."

whom the opinion was written. A typical example of a Griffith opinion, expressed in fewer than 200 words, is the following opinion provided to the Brisbane Municipal Council in 1878⁷⁹:

“In order to deprive the owner of land of his rights of ownership on the ground that it has become a public highway it is necessary to show that he or his predecessor in title has dedicated it to the public as a highway.

In the present case the only evidence of dedication appears to be the fact that a plan showing a proposed subdivision of the land with the portion now in question delineated as a street was lodged in the real property office some years ago by the then owner.

But no land abutting on the alleged road appears to have been sold nor has the road been ever used or marked on the ground as a public highway.

I think that the mere deposit of the plan is insufficient to prove a dedication of the land to the public. I am therefore of opinion upon the facts as stated that the supposed road is not a public thoroughfare and that the council have no right to interfere with the erection of the fence across it.”

Secondly, as appears from the opinion just quoted, the analysis is often undertaken by reference only to underlying principle, with little or no reference to case law. As Graham has neatly described him, Griffith was a lawyer “governed by principle rather than by precedents”⁸⁰. In all 183 opinions by Griffith, only about 200 cases are mentioned, with about half of the opinions containing no reference to authority at all. When authorities are cited, they are conventionally used to support a proposition formulated by Griffith, without the need for any further elaboration or discussion.

Thirdly, to the extent that Griffith does refer to case law, the authorities were almost invariably English. Apart from decisions in related cases⁸¹, the whole collection of opinions appears to contain only one reference to Australian authority⁸². This is revealing. Studies of the reported Queensland cases from this era suggest that the 1880s were a period of transition, with the profession beginning to have regard to the decisions of other colonies. It might have been expected that Griffith, with his commitment to federation and a national court system, would have found more than one occasion to consider Australian authorities when preparing this group of opinions. If they were considered, they were not mentioned.

Fourthly, whilst Griffith had taken silk by 1876 and was under enormous time pressure, he conventionally provided opinions without any apparent assistance from junior counsel. In the Opinion Books, the vast majority of opinions (91%) were given by Griffith after he took silk, yet there appear to be only six joint opinions (3%).

⁷⁹ *Ex parte Municipality of Brisbane* (1878).

⁸⁰ AD Graham, *op cit*, at 60.

⁸¹ eg *ex parte Union Bank* (1886), which refers to the related case of *Union Bank v Echlin* (1886).

⁸² *re Landsborough Wills* (1886) which refers to the unreported case of *Bright v Attorney General*, *Brisbane Courier*, 16 Dec 1873.

Fifthly, it was largely individuals, rather than corporations, who received Griffith's advice. Broadly speaking, the opinions may be divided between those prepared for individuals (54%), companies (25%) and government instrumentalities (21%). The individuals came from a wide range of client types, from trustees and executors to small businesses operating in partnership. The companies were primarily involved in banking, insurance or mining. The most loyal client, however, was the Brisbane Municipal Council for whom Griffith prepared 25 opinions (13.5%). These statistics would seem to reflect the preferred business structures of the time, which continued to favour partnership over corporate arrangements.

Sixthly, the subject matter of the opinions was strikingly diverse. The bulk of the opinions concerned conventional questions which lay at the core of legal practice during this period - the meaning of wills, the administration of trusts and deceased estates, priority disputes between conflicting proprietary interests, the enforcement of lending transactions and disputes about partnerships. The opinions also dealt with a range of issues which were peculiarly referable to the events of the time. The opinions analysed whether the operation of a tramway on Brisbane streets would involve a public nuisance⁸³; how the land over which the tramway was operated could be assessed for Council rates⁸⁴; whether ships using the Brisbane River were entitled to be moored at a wharf extending across a neighbouring riverfront property⁸⁵; whether a strike by Brisbane Newspaper's printers and compositors would be a breach of the criminal law⁸⁶; and the status of property held by a married woman under the Torrens system⁸⁷ and under Crown lands legislation⁸⁸.

The flood of new inventions also gave rise to legal difficulties, including the question of whether the newly invented sewing machine could be sold door-to-door without infringing the *Hawkers and Pedlers Act of 1849*:

"No doubt sewing machines were not invented when the Act was passed, and their sale could not have been contemplated by the Legislature. But the word "goods" is I think large enough to include anything capable of being carried about and the fact that the kind of goods in question has been invented since the passing of the Act is not, I think, sufficient to exclude its operation (*Parkyns v Preist* 7 QBD 313) where it was held that a newly invented steam tricycle was a locomotive within the meaning of the older Acts."⁸⁹

Novel questions also emerged from the Courts. Even before the advent of motor vehicle traffic, the Chief Justice (Sir Charles Lillie) was sensitive to the problem of traffic noise. In Rockhampton, Lillie CJ appears to have responded to this interference with the administration of justice by roping off the

⁸³ *ex parte Brisbane* (1880).

⁸⁴ *ex parte Brisbane* (1891)

⁸⁵ *ex parte DL Brown & Co* (1883)

⁸⁶ *ex parte Brisbane Newspaper Company Limited* (1889)

⁸⁷ *re Interest of Husband in Wife's Lands* (1886)

⁸⁸ *ex parte O'Brien* (1885)

⁸⁹ *ex parte Stenson* (1889)

adjacent street during his circuit visits⁹⁰. On 16 March 1885, the Chief Justice appears to have expressed similar intentions in open court in Brisbane⁹¹:

“His Honour had yesterday great cause to complain of the disagreeable noise, which he compared to a discharge of artillery and jingle of bells, made by the heavy traffic in the streets in the vicinity of the court. He remarked that the Municipal Council ought to devise some means for preventing a recurrence which interfered with the administration of justice”.

These remarks appear to have generated concern, by the Brisbane Municipal Council, that the Chief Justice was proposing to personally involve himself in the management of Brisbane traffic. The next day, Griffith provided the Council with an opinion which analysed the powers of the court under the laws of contempt:

“Applying this rule, I think that if the noise of traffic in a public street is so great as to interfere with the due conduct of the business of the court, any one wilfully causing such a noise is guilty of a contempt of Court and may be punished accordingly. It follow in my opinion that although the Supreme Court has not power capriciously to direct the stoppage of traffic in a street, it has power, if the noise of traffic in the street is so great as to interfere with the business, to punish any person who causes the noise. The practical result is no doubt equivalent to stopping the traffic.”⁹²

V

Not all of Griffith’s opinions are of compelling historical interest. Many are concerned with ordinary legal issues affecting ordinary people of the time. Their primary interest, for the legal historian, is in helping to understand the character of practice at the time.

Another category of opinions deals with conventional legal issues, but involves people and events of historical interest. Within Griffith’s opinions can be found advices dealing with prominent figures of the time, including leading pastoralists (eg William Graham⁹³ and William Kent⁹⁴) and political figures (eg James Swan⁹⁵ and Eyles Browne⁹⁶). There are advices concerning calamities of the era, including the wreck of “*The Quetta*” in Torres Strait⁹⁷, the collision of “*The Beaver*” and “*The Barcoo*” on the

⁹⁰ *Brisbane Courier*, 8 September 1885, at 3.

⁹¹ *Brisbane Courier*, 17 March 1885, at 4.

⁹² *ex part Brisbane re stoppage of traffic by Judge of Supreme Court* (1885).

⁹³ *ex part Bank of Australasia re the Will of Hon W Graham* (1892)

⁹⁴ *Turner v Kent* (1891)

⁹⁵ *re Swan’s Will; ex parte Gailey and Ewing* (1891). James Swan was a former editor of the *Brisbane Courier* and Mayor of Brisbane.

⁹⁶ *ex parte Trustees of EIC Browne* (1888)

⁹⁷ This calamity was reported in the *Brisbane Courier*, 4 March 1890, at 5. It gave rise to legal issues concerning the operation of mutual wills, when it is unknown who died first (*re Nicklin’s Will* (1890)) and issues concerning the publication in the press of photographs obtained of victims (*Brisbane Newspaper Limited ats Waugh* (1890)).

Brisbane River⁹⁸ and the Brisbane flood of 1889⁹⁹. Major ventures of the time were also the subject of advice, including the promotion of mining companies¹⁰⁰, the construction of the Victoria Bridge¹⁰¹ and the development of Brisbane's first tramways¹⁰².

There are, however, three further categories of opinion which are of particular interest.

First, there is a group of opinions in which Griffith considered matters which clearly flagged the need for law reform – reforms which Griffith (as parliamentarian) was later able to effect by legislative means.

The most poignant example of this concerned a mining accident which occurred near Gympie in 1874¹⁰³. This accident occurred when a mine worker, Alfred West, who was clearing a work site, struck a stray charge of lithofracteur (nitroglycerin) which exploded in his face. The most likely cause of the accident was the negligence of a fellow workman, who was in the habit of carrying these explosives around the site in his pocket. The accident cost West his sight and his right hand. When the matter was submitted to Griffith for advice, however, he considered that no cause of action against the mining company was likely to succeed. At the time, the common law doctrine of common employment meant that employers were not legally responsible to their workers for the negligent acts of a co-worker, and Griffith was unable to find evidence of personal fault by the employer. It is difficult to imagine that a case of such apparent injustice would not have remained with Griffith when, as Premier, he was in a position to influence the reform of industrial laws. It was under Griffith's tenure as Premier in 1886, that the doctrine of common employment was finally abolished¹⁰⁴.

A more prosaic example concerns the early shortcomings of the Torrens system in Queensland, which caused Griffith difficulty in the very first of his opinions¹⁰⁵. This difficulty was able to be overcome by the passage of the *Real Property Act 1877 (Qld)*.

Secondly, there is a group of opinions which concern the legal complications which dogged Australian colonists in the period prior to federation, because of the separate legal systems operated by each colony on the Australian continent.

In modern Australia, for example, we take for granted that a company formed in Queensland can own land in New South Wales. In Griffith's time, however, this was highly controversial. On 23 July 1883, Griffith advised Burns Philp & Co that¹⁰⁶:

⁹⁸ *ex parte Barcoo and Beaver* (1889)

⁹⁹ *ex parte Wm Jones & Sons* (1889)

¹⁰⁰ *ex parte Sugarloaf Tin Company* (1874).

¹⁰¹ *ex parte Corporation of Brisbane* (1874); *Brisbane v Lord Brassey* (1888).

¹⁰² *ex parte Brisbane* (1880).

¹⁰³ This accident was reported in *The Queenslander*, 29 August 1874, at 6. The opinion of Griffith was provided later that year: *ex parte Alfred Thomas West* (1874).

¹⁰⁴ *Employers Liability Act 1886 (Qld)*.

“There has been a considerable conflict of opinion amongst lawyers in Australia on the question whether a Company incorporated by the law of one Colony can hold land in another. I am very clearly of opinion that it cannot. Without entering into details it may be sufficient to say that no country has ever recognised the law of another as affecting its real property and that it would be impossible in the event of the winding up or other dissolution of the corporation to give effect to the provisions of the laws of the country of its domicile for the distribution of its assets...”

This advice appears to have caused some consternation to the client, which provided Griffith with the opinions of other distinguished lawyers to the contrary (including Mr MH Stephen QC of the New South Wales Bar). Griffith, however, was unmoved. On 25 August 1883, in one of his longest opinions, but again without reference to authority, he explained the basis for this views¹⁰⁷.

The practical problems arising from dealings between colonies are a recurrent theme in the Griffith opinions. Even in the case of simple estates, the existence of assets or liabilities in two colonies usually called for the appointment of two sets of administrators¹⁰⁸. The existence of these unnecessary and costly obstacles to the ordinary exercise of legal rights provide an important context in which the movement towards Australian federation took place.

Finally, there is a group of opinions which cast light upon the intriguing question of how a leading political figure, serving as Attorney-General or Premier, can properly serve as a source of private legal advice.

Whilst there is no suggestion of Griffith placing himself in a position of actual conflict with his public duties, there are many instances in which he strays into difficult territory. These include cases where he provided advice to a party who was seeking a mining title from the Crown¹⁰⁹; advice to a party seeking a deed of grant from the Crown, in which he noted that “the law in this respect is likely to be altered shortly”¹¹⁰; advice upon the meaning of Queensland legislation¹¹¹; advice upon the lawfulness of a conviction for breach of a local authority by-law¹¹²; and advice based upon his own views of legislative intent (“...as I said in the Legislative Assembly when the Legislative Assembly omitted the declaratory words which were inserted to remove any doubt on the question....”) ¹¹³.

¹⁰⁵ *ex parte Bridgeman* (1869). The difficulty arose, in part, because of the concern that titles were governed purely by the requirements for registration and not by equitable principles.

¹⁰⁶ *ex parte Burns Philp & Co* (1883).

¹⁰⁷ *ex parte Burns Philp & Co (Limited Further Opinion)* (1883). This opinion, at 1200 words, is approximately double the length of Griffith’s usual opinions.

¹⁰⁸ *ex parte Clapperton* (1877); *re Cullens Will* (1880).

¹⁰⁹ *Anon* (18 July 1887)

¹¹⁰ *re Landsborough’s Will* (1886)

¹¹¹ *ex parte Mortimers Executors* (1888); *re Undue Subdivision of Land Prevention Act 1885* (1887); *ex parte City and Suburban United Municipality* (1885).

¹¹² *ex parte Hyne* (1891)

¹¹³ *ex parte Mayor of South Brisbane* (1886)

As a legislator, Griffith also seems to have been approached to consider the possibility of a legislative solution to some of the more intractable problems facing his clients. It seems that the only case in which legislation was actually passed to solve such a problem involved the establishment of a tramway in Brisbane, which occurred whilst Griffith was in opposition¹¹⁴. However, the possibility of a legislative solution was alluded to and rejected in a number of opinions, including a case involving doubt about the legal structure of the Union Bank (“I do not think that any legislative action is necessary. The steps I have suggested will effectively protect and secure the Bank”)¹¹⁵; a will with unfortunate consequences (“I do however see any immediate need for inviting legislative aid in the present case”)¹¹⁶; and a structural problem with a charitable trust¹¹⁷.

Whilst Griffith successfully navigated these difficult issues, they demonstrate the wisdom of requiring political leaders to separate themselves from any private practice they may have conducted as a lawyer.

VI

This study of the Griffith Opinions represents the first stage of research into the Feez Ruthning Opinion Books. There is conservation work to be done on Opinion Book 1, to provide access to what would seem to be the earliest of the opinions. There is transcription work required, to provide a clear and accurate version of faded text. There is also extensive research needed, to place the opinions in their proper context of the events and court proceedings of the time. Archive searches will also continue, to seek to unearth further opinions stored in the records of public institutions in Queensland. From this material will emerge a clearer picture of the professional lives of the principal figures of Queensland’s early legal history.

¹¹⁴ *ex parte Brisbane* (1880); *Railways and Tramways Extension Act 1880 (Qld)*.

¹¹⁵ *ex parte Union Bank of Australia* (1886)

¹¹⁶ *re Hollands Will* (1884)

¹¹⁷ *ex parte Ann Street Presbyterian Church* (1883)