

Ceremonial sitting to mark the 175th anniversary of the Supreme Court of New South Wales

17 May 1999

The Honourable E G Whitlam AC QC

May it please the court, I have the honour and the privilege of speaking today on behalf of the Bar of New South Wales.

At Government House, on the corner of Bridge and Phillip Streets, on the 17 May 1824, Francis Forbes Esquire took the oath of office as Chief Justice of the Supreme Court of New South Wales. We are gathered together to remember gratefully that day and its consequences. New South Wales had a Chief Justice before it had a Legislative Council or a Legislative Assembly or a Premier. For 175 years the Supreme Court has been primarily responsible for ensuring that the executive, legislature and judiciary of New South Wales obey the rule of law.

In Australia we do not learn and discuss our history as much as we should. For too many of us history happens in other countries. Except in New York State and a few of the other original States in the United States, no common law court in the world bears a name as old as the Supreme Court of New South Wales. Seven days before Chief Justice Forbes took his oath, John Lewes Pedder took the oath of office as Chief Justice of the Supreme Court of Van Diemen's Land. After the colonies of New Zealand, Victoria and Queensland were separated from the colony of New South Wales, Chief Justices of the new Supreme Courts took their oaths of office in January 1842, June 1852 and February 1863. The Supreme Court of Van Diemen's Land became the Supreme Court of Tasmania in November 1855.

When I was associate to the first Justice Maxwell and the third Justice Owen before and after the Pacific War, the Supreme Court of New South Wales had a dozen judges. By 17 May 1974 when the Court celebrated its 150th anniversary, the number of its judges had trebled. The following day I celebrated my re-election as Prime Minister and my honourable and learned friend, Mr John Howard, celebrated his election to the Federal Parliament. We can recall the high regard in which members of the Federal Parliament held the judges of this Court at that time. Four Federal Attorneys-General from the Bar of New South Wales, two from each side of politics, had persuaded the Attorney-General and successive Chief Justices of New South Wales to make six judges available to act as Federal Royal Commissioners or to chair Federal Committees of Inquiry. Two of those Federal Attorneys-General are still alive. One is my honourable gallant and learned friend, Mr Tom Hughes. I am the other.

Chief Justice Forbes was far-sighted when he chose to be addressed as "Your Honour". It was the style used in the courts in Ireland and the United States. It is the style followed in the subsequent courts in Australia and New Zealand and in their former territories. In the courts established in the former territories of the United Kingdom - even in Canada - a judge is addressed as "My Lord", which to Australian ears has a slight connotation of servility. Australian judges who hold commissions in courts in our region seem to enjoy the experience. They have all been men.

The Supreme Court of New South Wales has made and continues to make history. Of its 43 judges, four are women. It has a Chief Justice who was born in another country. It has a Judge of Appeal who was the President of the Court of Appeal in another State. It has a Court of Criminal Appeal which has been constituted by women judges. Amongst its Chief Justices there have been three members of the same family in lineal descent, the Streets. Chief Justice Jordan, who combined a rather forbidding mien on the Bench with a Rabelaisian sense of humour out of Court, stands out as perhaps its greatest juristic adornment. When Chief Justice Dixon retired he said it was a tragedy that Jordan had not been appointed to the High Court of Australia.

In common law countries with Federal systems of government, such as the United States, Canada, Australia and India, the role of judges is especially crucial. Judges are required to hear all sides in the great issues and to publish the reasons for their decisions. The rule of law requires a competent, conscientious and courageous Bar, able and willing to express proper principles to Australia's executives, legislatures and judiciaries, Federal and State. One woman and 42 men have been justices of the High Court. Twelve justices were previously judges of the Supreme Court of New South Wales, eight of them being appointed in the last 30 years. The present Chief Justice of Australia was

the Chief Justice of New South Wales. This is a most persuasive precedent.

I am confident that, when the next generation celebrates the bicentennial of the Supreme Court of New South Wales, the officers of the Court will again acknowledge and applaud the contribution which its judges have made to the development of the common law and the rule of law throughout Australia.

If the Court pleases.