

Commercial Causes Centenary Dinner

COMMERCIAL CAUSES CENTENARY DINNER WELCOME BY THE HONOURABLE JUSTICE P A BERGIN 6 NOVEMBER 2003

Chief Justice, Mr Attorney, Judges, Masters, members of the profession. I welcome you to this celebration to mark the 100th year since the commencement of the Commercial Causes Act, 1903 - and since that Act was repealed in 1973, to also celebrate the work of the Court and the profession in the operation of the commercial causes list since that time.

Responsibility for the idea to have this celebration rests with the former List Judge, now the Chief Judge of the Land and Environment Court, Justice Peter McClellan and Chief Justice Spigelman. The soundness of that idea is evidenced by your presence tonight for what I trust will be a very enjoyable and memorable occasion.

From the Commemorative Booklet on your tables you will see we shall have the pleasure of addresses by the Chief Justice and the Honourable Andrew Rogers QC.

May I just ask you to turn to the back page of the Booklet where you will find the names of the Judges of this Court who, since 1903, have been allocated to the Commercial List or Commercial Division. In the latter part of the last century this was an exclusive allocation. There were, and are, other judges who have heard and hear commercial causes. They include AR Taylor, R. Else Mitchell, LJ Herron, MF Hardie, DA Yeldham, JRT Wood, MD Finlay, WP Ash, DA Hunt, TW Waddell, GD Needham, PE Powell, KJ Carruthers, DH Hodgson, and HD Sperling. The present judges of the Equity Division who sit in commercial causes for three months of the year include RI Barrett, GA Palmer, IV Gzell and RH Macready (as an acting Judge and also as a Master).

It is truly a pleasure to have with us this evening so many of those former judges and judges on that list. I would like to especially welcome John Clarke, Michael Foster, Andrew Rogers, Terry Cole, John Brownie, Barry O'Keefe, Roger Giles, Moreton Rolfe and Bob Hunter. Unfortunately for us Ian Sheppard is enjoying the climes of Italy and Gordon Samuels has apologised for his inability to be here this evening but has asked that his love be conveyed to all. Henric Nicholas who is absent on leave has also expressed his apologies.

Apologies have also been received from Chief Justice Gleeson. Justice McHugh, Justices Meagher, Hodgson, Santow, Tobias, Dowd, Allsop and Annabell Bennett, Master Macready, the Honourable Philip Powell QC, John McCarthy QC and the solicitors of ASIC.

The Commercial Causes Act 1903 was the idea of Bernard Ringrose Wise, the Attorney General for NSW in 1903, consequent upon representations from the commercial community and the legal profession and after discussions with Chief Justice Darley. It was his aim, as he put it, to have commercial causes dealt with "under special provisions directed to securing rapidity of decision and cheapness".

Judges hearing commercial causes were given the statutory discretion to give directions "expedient for the speedy determination of the questions in the action really at issue between the parties". A list of commercial causes was established at that time and the judges were given power, amongst other things, to: (a) dispense with pleadings; (b) dispense with the technical rules of evidence in certain instances; (c) require either party to make admissions with respect to any question of fact involved in the cause; and (d) settle the issues for trial.

I would like to take just a few moments to tell you a little about the man who was, in the main, responsible for the introduction of the Act[i].

Mr Wise was born in Petersham in 1858 and was the second son of Edward and Marie Wise. His father Edward Wise, who was born on the Isle of Wight, was also Attorney General for NSW in W Forster's Government, appointed in October 1859, after having earlier served as Solicitor General. He was appointed a Judge of the Supreme Court in 1860 and sadly, according to Sir William Manning, it appears the unrelenting workload of the Court led to his demise just five years later.

After his father's death the family returned to England and Bernard Wise attended a grammar school at Leeds and then the Rugby School where he excelled at his studies and as a debater and athlete. In 1876 he entered the Queen's College, Oxford on a Rugby presentation worth 90 pounds a year. He graduated brilliantly in jurisprudence and won the university and British amateur mile championships. He was called to the Bar at the Middle Temple in April 1883, then returned to Australia and was admitted to the Bar in Sydney in August 1883.

He nominated for the constituency of South Sydney and notwithstanding his Oxford accent in what from all accounts was a relatively rough and tumble electorate, he was elected over opponents AJ Riley, then the Mayor of Sydney, James Toohey, the Irish-supported brewer, and Mick Simmons, the popular sporting identity. He was appointed

Attorney General in May 1887 in Parkes' administration but resigned not long after by reason of some changes in Bar practice in relation to the Attorney's capacity to practice whilst holding office.

He subsequently advocated for unionism and equality for workers claiming that the workers' freedom to contract was the cause of inequality. He was returned to the Legislative Assembly in 1891 and was a delegate to the Australasian Federal Convention 1897-98. In 1898 he won the seat of Ashfield and was also appointed Queens Counsel. He served as Attorney General from September 1899 to June 1904 and Minister of Justice from July 1901 to June 1904.

From all accounts he was a man of enormous energy and commitment, having an integral role in social reform legislation including the Early Closing Act 1899, Old-Age Pensions Act 1900 and Women's Franchise Act 1902. He was the driving force for the enactment of the Industrial Arbitration Act of 1901.

He had much contact with and interest in the artistic and literary community and as trustee of the National Art Gallery of NSW had land set aside in the Domain for a free public library - a wish of his late father.

Between 1904 and 1916 his energies were sapped by both overwork and a bout of malaria he contracted whilst travelling in South America. The Labor premier WA Holman appointed him agent-general in London in 1914 and after visiting the troops in Salisbury he died suddenly in 1916.

His ideas enshrined in the Commercial Causes Act survive today. He was indeed a man of vision. He was a man of good judgment and yet his judgment of himself was so harsh - It was:

My failure in Sydney has been so complete - my qualities those which Australia does not recognise, my defects those which Australians dislike most.

The rigours of the competitive environment that makes Sydney the leader it is in commerce were perhaps present then and caused BR Wise to feel at the low ebb that this judgment of himself evidences. It is the Premier's, WA Holman's observations made in 1916 that you might think are those that we should remember. He said:

There is hardly anything in our public life which we have to consider today that cannot be traced back to his brilliant mind and clear foresight. He held undisputed supremacy as the foremost debater, foremost thinker and foremost public man in the life of New South Wales.

Tonight as we look back a little you may think that this Court, the legal profession and the commercial community have been greatly served by the vision and commitment of Bernard Ringrose Wise.

i Much of the detail has been obtained from the Australian Dictionary of Biography; Volume 6: 1851-1890, p 427-429; Volume 12: 1891-1938, p. 546-549.Z