

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

17 May 1999

### **The Honourable R J Carr MP, Premier Of New South Wales**

Chief Justice, Prime Minister, former Prime Minister Gough Whitlam, your Excellency, distinguished guests, ladies and gentlemen, we celebrate today not only the 175th anniversary of this noble institution, the Supreme Court of New South Wales; but the remarkable continuity of New South Wales and Australian history.

In a real sense, the executive government shares this anniversary with the Court itself. We have a common legislative anniversary.

The Act of July 1823, establishing the Supreme Court, also created a Legislative Council of seven appointed members to advise the Governor of the colony.

It was, as Sir Robert Garran wrote in 1901:

*"The first legislation passed by the Imperial Parliament conferring anything like the rudiments of local self-government on the New South Wales community."*

Significantly, Section 24 of the 1823 Act stated:

*"It is not at present expedient to call a Legislative Assembly in the said colony of New South Wales."*

That had to wait another 33 years.

But, again, we can perceive what Garran called:

*"The feeble germs of representative government, whence has since sprung the splendid fabric of parliamentary institutions in Australia."*

The first Chief Justice, Francis Forbes, proclaimed the Charter of Justice granted under the Act on May 17, 1824. It is that event we celebrate today.

Greenway's Courthouse was not yet finished. The building which Governor Macquarie had designated for a court house had, on the insistence of his nemesis, Commissioner Bigge, been dedicated to an even Higher Authority. It is still in use as St James Church.

The ceremony took place in what was known as the Georgian School, just across the road in Elizabeth Street.

So this remarkable precinct, with many of its notable buildings preserved, has been the seat of justice in New South Wales for 175 years.

There can be no doubt that the strength and integrity of the Supreme Court over all those years owed much to the character of the first Chief Justice, Sir Frances Forbes.

He was also, ex officio, a member of the first Legislative Council; again a reminder of the interrelationship between government and the Court in our society from the beginnings.

All the more admirable, therefore, is Forbes' achievement in asserting and maintaining the Court's independence. His role during the rule of Governor Darling, in extending trial by jury and freedom of the press is well-known.

Not so well-known, perhaps, is his advocacy on behalf of the Aboriginal people. For example, he was the first judge, perhaps anywhere in the British Empire, to protest against the doctrine that Aborigines

could not be witnesses or give evidence in court on the grounds that they could not sincerely take the Christian oath. The question, Forbes said, was not one of religion, but of truthfulness.

For many new insights into the mind and character of Sir Frances Forbes we are all indebted to Dr J M Bennet, the distinguished historian of this Court. He has recently published the Forbes Papers, produced by the New South Wales Parliament as a Centenary of Federation project.

Let me conclude with a striking extract from one of Forbes' letters to the Under Secretary for the Colonies in London, Robert Wilmot-Horton.

Forbes wrote, in February, 1827:

*"A judge cannot be too careful of his reputation for independence. If he loses that he loses his necessary influence over public opinion ... His charges bear no weight, the juries do not respect him and his decisions carry no conviction over the mind of the public."*

Chief Justice Forbes continued:

*"I am no advocate for courting popular applause. But the good opinion of the public, over which one presides, is worth having, and the judgment of the people, although sometimes misguided, is always grounded on right feeling."*

We may measure the stature of our first Chief Justice when we reflect that he was writing, in the pre-democratic era, from what was still predominantly a convict colony. He may justly be called Australia's first democrat.

Having been educated partly in the United States, Francis Forbes was also, by conviction, a republican. But his words on the independence of the judiciary, and respect for public opinion, remain even more relevant today.

Chief Justice, ladies and gentlemen for 175 years, this Supreme Court of New South Wales has maintained its independence and its integrity and it stands as high as ever in public respect.

It is an honour, on behalf of the Government and people of New South Wales, to add my tribute and my congratulations today.