

THE SUPREME COURT OF

WESTERN AUSTRALIA

CENTENARY OF THE COMPLETION OF CONSTRUCTION AND OPENING

OF THE SUPREME COURT BUILDING ON 8 JUNE 1903

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 9 JUNE 2003, AT 9.27 AM

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MALCOLM CJ: We are sitting this morning to mark the centenary of the completion of construction and the opening of the Supreme Court building on 8 June 1903.

I welcome His Excellency the Governor and Mrs Sanderson and all of the special guests and others present in Court this morning. At the Bar table, I note the appearance of Mr Solicitor General representing the Government of the State, Mrs Elizabeth Heenan, the President of the Law Society and Mr Ian Viner QC, President of the Western Australian Bar Association. Those present in Court and special guests include Justices French, Nicholson, Lee and Carr of the Federal Court. The Principal Registrar and Registrars of this Court, the Chief Judge Hammond of the District Court, Chief Judge Michael Holden of the Family Court, her Honour Judge Kate O'Brien, President of the Children's Court, his Honour Judge Starkey, President of the Western Australian Judicial Commission, Mr Peter Panegyres, Crown Solicitor, Ms Fiona Low representing the DPP. I particularly welcome our very special guests, the Hon Sir Ronald Wilson and Lady Wilson, my predecessor the Hon Sir Francis Burt AC KMCQ QC, the Hon John Wickham QC and Mrs Wickham and the Hon ARA Wallace as well as a large number of retired Judges and Masters of this Court.

At the dinner to mark the centenary on Saturday, 7 June 2003, for those of you who were fortunate enough to attend that magnificent occasion, I did give an account of the history of Court accommodation following the settlement in Western Australia in 1829 until the opening of the building on 8 June 1903. As all can see, the Supreme Court building was constructed on a grand scale and is an excellent example of the federation academic classical architectural style used in major public buildings in the 1900s.

It was designed by the chief architect of the Public Works Department John Grainger. It has an imposing facade with central portico of eight coupled columns marking the entrance. The interior has a grand foyer and staircase with a domed stained-glass ceiling which has been recently restored. Other areas within the Court have also been recently restored, including number 2 Court and each of the four original sets of Judges' Chambers.

Court number 1 in which we are sitting today was the subject of a major restoration project in 1989. There was a ceremonial sitting to mark the completion of the work on 22 August 1989, coinciding with the visit by the then Lord Chancellor of England Lord Mackay. The building was originally designed to accommodate the Chief Justice and three Judges of the Supreme Court. The Court is now constituted by the Chief Justice, 16 Judges and two Masters who are members of the Court. In addition there are eight Registrars.

Despite the addition of a new building to house the Supreme Court library and to accommodate four sets of Judges' Chambers and two additional law courts in 1987, the Court ran out of space in 1989 and since 1990 a number of Judges and Registrars have been accommodated in temporary accommodation at 111 St Georges Terrace, Perth, and accommodation has been at a premium within the old building.

While a proposal to erect additional accommodation on the present site was approved by the Government of the day in April 1992, there was a change of Government before the expansion project could be commenced. While a number of proposals were considered by the Court Government during its term of office and a proposal to establish a Court complex in the Central Business District was considered, the problem of the accommodation of the Supreme Court was not solved.

The Supreme Court building has been identified as of exceptional cultural heritage significance in the City of Perth and the State, both for its representation of the role of the law in the administration of justice as well as a leading example of the public architecture of the period. The Court and the Stirling Gardens to the north and the Supreme Court Gardens to the south have been classified by the National Trust of Australia and entered on the Heritage Council of Western Australia's Register of Heritage Places and the Register of the National Estate.

The grand official opening took place on 8 June 1903 at a ceremony in the entrance hall and main foyer. Members of Parliament assembled at the west end of the entrance hall and the officers of the court with the architect and contractors gathered at the east end. The Chief Justice Sir Edward Stone and Justices Parker and McMillan were dressed in ceremonial scarlet robes similar to those worn by the Judges today, except that they wore full bottom wigs.

Unfortunately Justice Burnside was absent, suffering from typhoid fever. Mr Commissioner Augustus Roe took his place. The Premier and the Attorney-General Walter James KC wore a formal Levee costume with a full bottom wig and the Sheriff, Octavius Burt, was said by the newspaper to be "conspicuous because of his dangling sword."

The Honourable Cornthwaite Rason, the Minister for Works, had the duty of offering the Governor the key to the Supreme Court building. This was a massive gold key engraved on the handle with the British and West Australian Coats-of-Arms in shields, supporting a third shield, bearing the figure of Justice holding the scales of justice and a sword. Underneath were the words "fiat justitia", to do justice.

The great mystery of the 20th century going on into the 21st century is what happened to the key. It has disappeared. Inquiries have extended even so far as to the descendants of the Governor Sir George Bedford, his family, in relation to trying to locate it but the mystery remains unsolved.

The Governor took the key, praised the handsome and commodious building and expressed the hope that there might always be found judges like the Chief Justice and his colleagues who would administer justice in that court with patience, impartiality and fearlessness which had characterised the British Bench in all parts of the world. Amid applause he then handed the key to the Chief Justice. The Chief Justice said:

The bringing together of the various Courts and law officers under one roof could not but conduce to the speedy and efficiency administration of the law. We wish that the building might contribute in the minds of all a care for justice and a feeling of security in the parity of its administration.

The first case to be heard in the new building was in fact heard before the opening. It was not an historic case. It involved a matter of arbitration between the Registrar of Friendly Societies and the Carpenters and Joiners Union heard in Chambers on 25 May 1903. It was heard by Justice Parker who I believe was sitting in the Chambers currently occupied by the Senior Puisne Judge Justice Murray.

The honour of presiding over the first case to be tried in one of the new courtrooms was Mr Commissioner Roe. He commented that the proceedings in the new court would necessarily be of a much more solemn nature than had been conducted in the old building. According the Daily News, however, that most reputable of newspapers, the general public took a more down-to-earth attitude:

The Court proceedings this morning were carried out in an atmosphere reeking with the odour of fresh paint and varnish, for the new building was occupied for the first time, and sufficient days had not elapsed for the sheen and shimmer of polished woodwork and the scent of linseed oil to pass away. It did not take the old Court loungers long to discover where criminal trials were taking place and they hustled one another up the steps leading to the gallery in order to secure a position of comfort with a nice polished brass rail to lean upon. Evidently the arrangements of the Court and their own elevated position met with their entire approval as they gave vent to appreciative comment and sniggers.

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"Blimey, ain't it orl right!" whispered one identity to another. "Jes, like a bloomin' theatre" said another as he spat over the rail to test the height of the gallery from the floor. The grand view they had of prisoners in the dock and the equally fine vantage point from which they could watch the ascent from the gracelike cells beneath the floor was particularly pleasing to them.

The advantages of the new courtroom may have been lost on the first defendant to be tried there, a married woman who pleaded guilty to uttering forged cheques executed by her husband who was dying in Perth Hospital. Mr Commissioner Roe passed a merciful sentence of imprisonment of 6 months as it was described. The defendant burst into tears and had to be assisted from the dock by two female warders.

Subsequently there was a special sitting of the Court consisting of Chief Justice Stone, Justices Parker and McMillan in the presence of a large number of members of the Bar led by Walter James KC in his capacity as Attorney-General. Chief Justice Stone said that they were very fortunate to be in possession of a building worthy of the name which it bore and in keeping with the important and responsible duties they had to perform.

It is interesting to note that electricity was not immediately installed in the Court, not until the latter part of 1904. No doubt the decision-makers of that generation believed that they had solved the problem of accommodation for the Supreme Court as the building also provided for the accommodation of the Attorney-General, the Solicitor-General, the Crown Solicitor and their respective officers as well as the Companies Office and the Probate Office etcetera.

A number of Judges, including Justice Wallwork, who retired last year, and Justice Parker served their articles in the Crown Solicitor's Office which was located in the lower ground floor of the Supreme Court building until there was a move to the new Rural and Industries Bank building in Barrack Street adjacent to the Town Hall in the late 1950s.

Since the establishment of the Court in 1861 there have been 11 Chief Justices. Sir Archibald Paul Burt KT was Chief Justice for 18 years from 1861 to 1879. Sir Thomas Wrenfordsley was Chief Justice for 3 years from 1880 to 1883. His successor was Sir Alexander Campbell Onslow who held office for 8 years from 1883 to 1901. He was succeeded by Sir Edward Stone who had been appointed a Judge in 1883 and became Chief Justice from 1901 to 1905. He had been a partner with his father, George Frederick Stone, the founder of the old firm of Stone James and Co.

Subsequently, Septimus Burt, the seventh son of the Chief Justice was admitted to the partnership which known as Stone and Burt. Stone was Crown Solicitor from 1882 to 1884 when he was appointed the second Judge of the Supreme Court. When Justice Alfred Beech Hensman was appointed in 1892 Stone became the Senior Puisne Judge.

The years 1884 to 1891 were turbulent because of the heated disputes between Chief Justice Onslow, Governor Broome and the press. Chief Justice Onslow was suspended by Governor Broome in 1888. Stone was offered the position of Acting Chief Justice but refused because of the principle which was at stake.

In May 1989, the Privy Council recommended the removal of Onslow's suspension, thus vindicating Stone's loyal support for his Chief Justice. Onslow resumed his position of Chief Justice after an absence of 2 years. When Chief Justice Onslow retired in 1900, Stone replaced him as Chief Justice and was knighted in 1902. He retired in 1906.

He was succeeded by Sir Henry Parker, who had been appointed a Judge in 1901 and was Chief Justice for 7 years from 1906 to 1913. He was one of the co-founders of the firm of Parker and Parker in 1879. He was active in politics and was an elected member of Parliament between 1878 and 1897 and had three terms as the Mayor of Perth.

He was one of the leaders of the delegation to London which resulted in responsible government in 1890. He was the last Australian barrister to be appointed Queen's Counsel by the Queen personally. My file relating to the appointment of Queen's Counsel, King's Counsel and Senior Counsel dates back to the time of Chief Justice Parker.

Sir Robert Furse McMillan KCMG was appointed a Judge of the Supreme Court in 1902 and was appointed Chief Justice in 1914, serving until his death in 1931. He was born in London, called to the bar in 1881. He married an Australian girl, Margaret Elder from Victoria, associated with the old firm of Elder Smith and Co Ltd.

In 1902 the government decided to look to the English bar for a replacement Judge. After consulting widely, including Lord Coleridge KC, later the Lord Chief Justice, McMillan was offered the post and accepted. He was then 44. With a month he was on his way to Fremantle. He served Western Australia as a Judge of great distinction, from March 1903. In 1914 he was appointed Chief Justice and acted as Lieutenant-Governor from 1921.

His influence in the law, the administration of justice and the legal profession was substantial. Sir Owen Dixon said of him that he was "a man whom you could see at once was an ornament to the judiciary, one who struck the imagination of any young judge as man of the highest refinement of character representing the best traditions of the judiciary in the English-speaking world."

He was a prolific Judge. The number of his reported judgments, 828, far exceeds that of any other Western Australian Judge in the first of the 20th century. Few of his judgments were taken on appeal and in the vast majority of cases were affirmed. On more than one occasion the Judges of the High Court expressed themselves in entire agreement or concurrence with his judgment.

He established the most cordial relations between bench and bar. He did not seek popularity, but as Sir John Northmore said of him:

No man at the time of his death held such a high place in the regard of the people of the state and no other held a higher place in the affection of those who called him friend or in respect of those who knew him as Chief Justice.

He died in office. The West Australian of Saturday, 25 April 1931 had a remarkable coverage of his funeral, occupying two full pages in the newspaper, together with pages of photographs. Under the heading Eloquent Public Tributes, the newspaper said:

The funeral of the late Sir Robert McMillan, Lieutenant-Governor and Chief Justice of Western Australia, took place yesterday and all sections of the community paid homage to the memory of a great citizen. Perhaps the most eloquent of many tributes to him was the sense of shock and personal loss with which the general public received the news of his sudden passing. Large crowds attended a service at St Georges Cathedral, lined the route taken by the funeral cortege and gathered at the graveside at Karrakatta Cemetery.

There is a photograph which shows a crowd of about 10 to 12 deep on either side of St Georges Terrace, from St Georges Cathedral right up to the Barrack Arch. Chief Justice McMillan had collapsed moments after he had eloquently moved a vote of thanks to the Governor for having opened the new St Georges College at the University of Western Australia.

Chief Justice McMillan was succeeded by Sir John Alfred Northmore KCMG, who served as a judge from 1914 to 1931 and served as Chief Justice of 15 years from then. Originally from South Australia, he joined the predecessor firm of Northmore Hale Davy and Leake. He was appointed a judge in 1914 and became Chief Justice in 1931. By the time he retired as Chief Justice in 1945, he was regarded, as the press of the day indicated, as a genial "national institution."

While some regarded him as irascible on the bench, it was acknowledged that his judgments were seldom disturbed on appeal. His most notable quality was regarded as an ability to eliminate the inessential. He was very much involved with the University of Western Australia, both as a pro-Chancellor and a Senator.

Sir John Dwyer KCMG was born in Victoria. His father was a butcher from Ireland. He was called to the Victorian

bar in 1902, admitted in Western Australia in 1904 and practised in Fremantle. After a period with Haynes Robinson at Albany, he returned to Perth in 1911. He enlisted in the army in 1916 and served in France. Upon his return he joined Moss in the firm of Moss Dwyer and Thomas. He was one of the three members of the Barristers Board who comprised the committee to establish a law school at the University of Western Australia. He was one of the founding lecturers.

In 1929 he was appointed a Judge of the Supreme Court and in 1946 he was appointed Chief Justice to succeed Chief Justice Northmore. He was highly regarded as a classical lawyer and was said to have had one of the most incisive minds the State had known. He applied legal principles rigorously and impartially. As a Judge, he was intolerant of obfuscating witnesses and ill-prepared barristers or the use of tactics with which he disagreed. There were some members of the profession who abandoned advocacy as a career as a result of his attacks upon them.

In 1951, he was appointed Honorary Lieutenant Governor for life. This was the last of such appointments. In private life he was regarded as extremely charming with a keen sense of humour. He was Chairman of the Public Library, Museum and Art Gallery and a Knight Commander of the Order of St John.

The Honourable Sir Albert Wolfe KCMG was appointed a Judge of the Supreme Court in 1938 - the year I was born. He was appointed Chief Justice in 1959 and served until his retirement in 1969. In 1926, he was appointed Crown Prosecutor, and later Crown Solicitor and Parliamentary Draftsman in 1929. He was appointed King's Counsel in 1936 on an occasion marked by some controversy. He made a very substantial, if sometimes controversial, contribution to the work of the Supreme Court and its jurisprudence. The Matrimonial Causes Act of 1941 is his statutory monument.

He was a very practical man. He enjoyed carpentry and a spare room on the basement level, now occupied by Barker J, had been adapted for use as a carpentry workshop. I was admitted to practice by a Full Court over which he presided. As perhaps many of you have heard before, I maintain that I am the only practitioner whose admission was preceded by a directions hearing to determine whether the required advertisements had been published at the appropriate intervals.

I subsequently appeared before him on a number of occasions. Carpentry was not the only topic upon which he claimed expertise, as I learned in a case about drilling wells on which he professed to be his own expert witness. As far as my researches go, he is the only Australian Judge who had the experience of being the Presiding Judge in the Court of Criminal Appeal sitting on appeal against a conviction at trial where he was the Trial Judge. He was the last of the Western Australian Chief Justices to hold a formal procession and a ceremony to open the Supreme Court circuit in country towns.

Sir Lawrence Jackson KCMG was a Judge of the Court for 20 years, from 1949 to 1969, and was appointed Chief Justice in 1969 until his retirement in 1977, a total period of service of 28 years of which eight were served as

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Chief Justice. Originally admitted to practice in New South Wales in 1937, he came to Western Australia to join his uncle's firm, then known as Jackson Leake and Co. At the age of 36, he was appointed of the Arbitration Court and a Judge of the Supreme Court in 1949. At that time the Supreme Court was constituted by the Chief Justice and three other Judges, as it had been in 1904.

Chief Justice Jackson was appointed to that office in 1969, the year when his successor, the Honourable Sir Francis Burt, was appointed a Judge of the Court in 1977. Under the stewardship of Chief Justice Jackson, there was a tangible transformation of the atmosphere of the Court for all who had business there. It was always a pleasure to appear before him. He set an example in terms of fairness, firmness, courtesy and compassion which many of us have attempted to follow.

All of these fine qualities were exhibited in a way which both enhanced the authority of his office as Chief Justice, while generating loyalty and affection on the part of his colleagues, the legal profession and the public. Sir Lawrence expected the highest ethical standards of those who appeared before him. There were substantial changes in the Court system generally during his period of office. In 1970, the District Court with five Judges was created, and the Family Court with four Judges was subsequently established.

The Honourable Sir Francis Burt AC KCMG was appointed a Judge of the Supreme Court in 1969 and was appointed Chief Justice in 1977, serving in that capacity until 25 May 1988. He will shortly celebrate his 85th birthday. He served as a Judge for some 19 years, of which 11 were as Chief Justice. After war service, Sir Francis established a large practice in the common law and industrial fields and was a visiting lecturer at the Law School at the University of Western Australia. He was appointed Queen's Counsel in 1959.

In March 1961, he founded and dominated the Independent Bar in Western Australia. The breadth of his knowledge and experience in the law was remarkable. The Western Australian Law Reports of the 1960s are compelling testimony to his dominance at the Bar in that decade. In 1967, he was appointed Counsel Assisting the second Royal Commission which inquired into the sinking of the HMAS Voyager after a collision with the HMAS Melbourne.

His work on the inquiry propelled him into national prominence and contributed very successfully to the success of the inquiry. Shortly afterwards, he was appointed by the State Government as a Royal Commissioner to inquire into the affairs of Rural Exporters Ltd. His report was completed not long after his appointment as a Judge of the Supreme Court on 19 February 1969.

Sir Francis had, and still has, a remarkable capacity to assess and analyse the issues involved in a controversy in such a way that the answer to the problem becomes very clear. The level of factual analysis, economy and a clarity of expression, combined with scholarship in what he has written over the years is extraordinary.

He was clearly propelled by "the instinct to verify" as Sir Owen Dixon called it. It was achieved by him handwriting his judgments rather than dictating them. The combination of intellectual scholarship, analytical skills, economy of expression, learning and knowledge of the law, commonsense, humour, decency and humanity which marked his legal career all served to qualify him for the high office of Chief Justice.

He also contributed substantially to the life of the community. He was appointed Lieutenant Governor in 1977 and appointed Governor in 1990. Sir Francis carried out his vice-regal duties as Governor with great humanity, humour, compassion and a full understanding of the constitutional duties of the office until his retirement in 1993. Very few Western Australians have achieved such a level of admiration from the community as this great Australian. It was a great privilege for me to have succeeded him in this important office.

As we celebrate the centenary of this magnificent building by the Chief Justices, Judges, Masters and Registrars, the profession and the public we should be grateful to those who worked so hard to have the building constructed, for the legacy which they gave us at the beginning of the 20th century which has served the community extremely well for over 100 years and a day.

While the court has significantly outgrown its present accommodation and approximately half of the judicial officers are housed half a kilometre away, we can only look forward at the beginning of the 21st century to the day in the not too distant future when, with additional accommodation erected on this site, all of the members and other officers of the Supreme Court can be accommodated, it not under the one roof at least on the same site.

Apart from the symbolic importance of the continued use of the Supreme Court in the administration of justice, it also represents significant links to the State's history and to its future. The Court is based in the administrative heart of the City of Perth as part of the central government and civic precinct that also includes the Town Hall, the central government buildings, Government House and the Concert Hall.

We have been delighted to observe the current refurbishments taking place throughout this magnificent building. It has been a demanding task for the many workers who have been busily engaged around the building but the results have been worth the effort. In particular, the main foyer and the four original Judges' Chambers have been refurbished in a manner which the original architect envisaged but was unable to complete due to the lack of funds. This vital restoration and renovation work is a

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small step towards maintaining this building as the centrepiece of the administration of justice for Western Australia for many years to come.

Yesterday, we were surprised and delighted by the fact that somewhere between 2 and a half and 3000 people queued up outside the building in a queue which, when I came, stretched from the main entrance, up to St Georges Terrace and for some distance down to almost past the City of Perth building.

Just under 2 weeks ago we marked the 15th anniversary of my appointment as Chief Justice. I then had an opportunity to thank a considerable number of people with whom I have worked over the years. This morning I won't repeat all of those but they all know that they have my gratitude.

This morning I would like to conclude by thanking my wife Kaaren who has been tremendously supportive during the last 7 years, nearly half my term of office. Her background in the justice system has given her a high degree of understanding and knowledge of what I do and why I do it. Her love and support, together with those of the beautiful daughter she has given me, are my most priceless assets.
Mr Solicitor?