

"CEREMONY OF FAREWELL TO THE HONOURABLE SIR LAURENCE
STREET, KCMG UPON THE OCASSION OF HIS RETIREMENT AS
CHIEF JUSTICE OF THE SUPREME COURT OF NEW SOUTH WALES"

Tuesday 1 November 1988

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
BANCO COURT)

BEFORE: STREET, CJ
JUDGES OF THE SUPREME COURT

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CEREMONY OF FAREWELL TO
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STREET CJ: I will ask the President of the Court of Appeal to preside at this sitting this morning.

KIRBY P: We gather here in this Banco Court under the watchful eyes of the Chief Justices of the past. The crimson robes we wear, they wore. They symbolise the link of this Court to an unbroken judicial tradition of eight centuries. No Judge who sits on the bench in this courtroom can escape the searching eyes of Chief Justice Stephen or the austere glance of Chief Justice Jordan. No practitioner, surrounded by history, can forget the continuity of public service which it is the privilege of lawyers to offer.

Today, 1 November, is by ancient tradition All Saints' Day. It was the day upon which for centuries the Saints, known and unknown, were celebrated. There may be few saints in this room on this occasion. Justice is not a cloistered virtue. But there is surely gathered here today one of the most remarkable assemblies of lawyers and judges ever to come together in this State, indeed in this country. We are here, with one mind, to pay a heart-felt tribute to the public

service of Sir Laurence and Lady Street. We are here to reflect, ever so briefly, upon the precious stability, continuity and yet change of our institutions of law, symbolised by this ceremony.

I say that this is a remarkable assembly because it is rare, in the one courtroom, to have the Chief Justice of Australia and his two distinguished predecessors, Sir Garfield Barwick and Sir Harry Gibbs. Sir Anthony Mason was himself a Judge and Judge of Appeal of this Court. In that sense he is one of us. We have also the two Justices of the High Court who first refined their analytic skills before the Judges of this Court. One of them, Sir William Deane, was also at one time one of us. We also have the Chief Justice and Judges of the Federal Court of Australia. Sir Nigel Bowen was also once a Judge of this Court. He sat with Sir Laurence Street in the Court of Appeal. Joining us today are also the former Chief Justice, Sir John Kerr and the surviving heads of the Divisions of the Supreme Court who served during the Chief Justice's tenure. They symbolize a company of nearly a hundred judicial colleagues who have sat with Sir Laurence Street in his long service as a Judge of this Court. The heads of jurisdiction of the other Courts of the State come together in this room, with other representatives of the community, elected leaders and members of the legal profession, old and new, to say farewell to the Chief Justice.

Most importantly, the family of the Chief Justice and the families of the judges are here. They make great sacrifices. The lives of public people are not easy. The lives of judges are lonely and demanding of time and attention. The families

share with us this watershed in the life of the Court as the fourteenth Chief Justice concludes his service.

Two hundred years ago exactly, the infant colony was struggling for survival, not far from this place. A criminal court was necessary within days of the arrival. A civil court of sorts had begun to administer justice four months later. The record shows that Judge Advocate David Collins was writing, at this very time, to the Under Secretary for Colonies, Nepean, about the difficulties of the administration of justice. He was asking (surprisingly enough) for more resources. He sent an urgent request for a copy of Blackstone's Reports, for copy of "whatever Acts of Parliament you may think necessary" and most earnestly of all "for any author that treats on costs". From the outset of the administration of justice in Australia, costs loomed large in the priority of things. (Historical Records of New South Wales, vol 1 part 2, 1982, Sydney, 210). Some things do not change.

A hundred years ago the debates of The Bulletin were about the termination of Privy Council appeals and the establishment of a local Court of Appeal which would be more available to Australians - particularly those many under sentence of death. (See The Bulletin, 13 October 1888, 4 "Wanted - A Court of Appeal"). The High Court of Australia was to come within fifteen years. The establishment of the Court of Appeal took eighty. The abolition of Privy Council appeals took almost exactly a century. Sometimes, in the law, we do not rush things.

I have mentioned these matters of history because history

is what this ceremony is about. History is the key to understanding the motive force of the public life of our Chief Justice. Everyone here knows, but let it be again recorded, that he is the son and grandson of a Chief Justice. They also sat in the central seat which he now occupies for the last time. It was remarked by Sir William Owen, on the retirement of his father just over thirty years ago:

"Never before, I think, has it happened in the English-speaking world that father and son have sat on the same Bench at the same time and in turn has become Chief Justice. The son has worthily upheld a great family tradition".
(1959) 59 SR (NSW) v.

If the former record has ever been equalled, it is unlikely that the achievement which Sir Laurence's appointment signalled, will ever be paralleled in the common law world. In the law, one can rarely say never. But it is so remarkable a phenomenon as to suggest uniqueness. The chance considerations which affect the appointment and elevation of judges was mentioned by Sir Owen Dixon in his farewell - lamenting that Jordan and Cussen were never appointed to the High Court. See (1963-4) 110 CLR v, xi. Therefore, with all the chances of the world and in a land which has disdained an aristocracy, the Chief Justice's elevation was the more remarkable. It may be attributed to the recognition of his shining capacities as a creative, energetic and imaginative judge of first instance. Every practitioner who had the privilege to appear before him in those far off days, will bear to the end an indelible memory of his performance. He was swift and efficient. He was courteous and painstaking. He was equalled by none in his

capacity to deliver an ex tempore judgment which marshalled the facts, expounded the law and reached conclusions which were generally accepted by the parties or upheld on appeal.

His talents, as well as his public service in many other fields of endeavour, recommended him to the Government of the day to succeed Sir John Kerr on his appointment as Governor General. To these qualifications must be added the grace with which he was able to carry on the public and ceremonial functions of a judge. Those skills, often under valued in our deprecatative country, are important to us, lawyers. We are more conscious than most of the importance of institutions and the need for unobtrusive ceremony as a support for the rule of law.

Yet to talk of these externalities does insufficient tribute to the intellectual contribution of the Chief Justice. It is recorded in the pages of the law reports, which for 75 years of this century provide a published diary of the Street family. There are many notable contributions by Sir Laurence in those pages. The most often spoken of is his innovative development of the declaratory order. He was determined that the remedies offered by the courts should be kept bright and shining. In this sense he trod in the footsteps of great forebears. He realized the vital importance of procedure and of cutting through impediments which stood in the way of bringing the law to the benefit of the people. By the development of declaratory relief he was ahead of his time. He assured new life and relevance to Equity, his first love. He provided remedies of great utility to the business community and thus to the economy. His lead has now been followed

throughout Australia. Even in criminal cases, declarations of right are now sometimes made.

Upon his elevation to Chief Justice, his principal contributions of the Court have been in the Court of Criminal Appeal, over which he tirelessly presided. It is, as every Judge who has sat in it can attest, a heavy responsibility, dealing as it does with the liberty of fellow citizens. The Chief Justice's mastery of the intricacies of criminal law and procedure soon dominated that Court. His capacity to cut through masses of detail and to go directly to the heart of the problem commanded the admiration of the Bench and Bar.

But with Sir Leslie Herron, and later Sir John Kerr, the function of the Chief Justice, almost imperceptibly, changed. A Chief Justice today in a court such as this must be, above all, a manager of the precious resources of judicial personnel. He or she must cope with the vastly increasing amount of litigation. The demands upon the judiciary to serve in Commissions of Inquiry and Tribunals. The inevitable tensions which arise between high-minded people of capacity and determination. All of these necessities put great pressure upon Sir Laurence Street. Yet he faced them with calm and a determination to be worthy of the forebears who had done so well before him. His attention to the many committees of the Court must be noted. His uncanny ability to remember the names of the officers of the Court, high and low. His attentiveness to the numberless requests of his judicial colleagues. His forthright representation of his views to the community, to Ministers and to Parliament, when necessary. Even recently, in

judgments, when his time for departure was approaching, he spoke out boldly. He warned against the dangers of enlarged police discretions. See Sibuse Pty Ltd v Shaw (1988) NSWJB 74 (CA). He cautioned about the perils of conscripting judges to statutory and nonjudicial bodies. See Lisafa Holdings Pty Ltd v Commissioner of Police and Ors (1988) NSWJB 167 (CCA). Interestingly, in this last comment, he recurred to something said by Sir Phillip Street in his farewell. See (1933) 33 SR (NSW) v, viii. He tirelessly encouraged the moves towards a national court system and legal profession. See Bankinvest AG v Seabrook & Ors (1988) NSWJB 184 (CA). Yesterday, in his last published judgment he held, boldly, that, in certain circumstances, a transsexual was not a "male person" for the purpose of the Crimes Act 1900, s 81A. See Regina v Lee Harris, unreported, CCA, 31 October 1988.

The Chief Justice has been, to the last, a special mixture of traditionalism and innovation. Of conservation and of radicalism. In this sense, he is the product of his distinguished parents. But he is also a reflection of the very tradition of our law which marries stability and creativity in a brilliant way.

At the Chief Justice's side throughout his service has been his wife, Susan Street. Effortlessly, she has earned the admiration and affection of all of the Judges of the Court and of their families, of practitioners and of the community. She was always there at Court functions, as she is today. Loyal. Attentive. Sincere. She took up her own career in hospital administration. She earned a degree and served on many bodies. Her fine qualities were soon recognised by governments of different political persuasions. She is now, in

her own right, the chairperson of the Eastern Area Health Service. And now, the children of Sir Laurence and Lady Street promise a continuation of the tradition of high service in the law.

At his farewell, Sir Owen Dixon recorded that he had been warned that, if he stayed on the Bench long enough, he would go mad. See (1963-4 110 CLR v, xi). He offered this as one explanation for his apparently headstrong decision to retire early, at the age of seventy-eight. He stated: "I am not one of those who subscribe to the view that the older you get the better you get. I think that is wrong. I believe in young everything". (See ibid, x).

I am sure that the same is true of our retiring Chief. In the past, Chief Justices have retired, usually, into old age. Mournfully, they acknowledge the recognition, finally, that they are old. But Chief Justice Street retires, a man ever youthful. I am confident that he will offer further service to the community. Fortunate are we, the beneficiaries, of this most talented family.

Byron cautioned that all farewells should be sudden. And so, on behalf of the Judges, past and present, the Masters and officers of the Court, I bid farewell. I do so with affection and gratitude - to Sir Laurence Street and Lady Street.

"When to the sessions of sweet silent thoughts
[You]
... summon up remembrance of things past".

I hope that this public acknowledgment of your many contributions will warm the recollections of a truly remarkable association with this Supreme Court and with your colleagues on it.

The Attorney General?