

ADDRESS: SUPREME COURT JUDGES' DINNER

THE HONOURABLE J P SLATTERY AO QC

1 February 2007

- 1 It is a great personal pleasure to be able to accept the Chief Justice's invitation to speak tonight of my own reminiscences of Judges of the Supreme Court.

- 2 In August 1988 when I retired from the Court at the age which former Chief Justice, **Sir Leslie Herron** called "the age of statutory senility", I was recalled immediately from what **Justice David Hunt** then called "the mothball Bench" to sit as an Acting Judge and Royal Commissioner to enquire into matters connected with the former Chelmsford Private Hospital and Mental Health Services. However, a more serious event was to follow. The authoritative Law Almanac declared in 2000 that I had died on 12 October 1999. At the power and direction of the present Chief Justice I was "resurrected" in a subsequent Law Almanac. I hope to maintain the status quo for some time.

- 3 As it is almost sixty five (65) years since I was admitted to the NSW Bar there are many Judges of this Court about whom I could reminisce. I thought it could be of interest and on safer ground for me to refer to Judges in my earlier years in the Law.

4 My relationship with **Sir Frederick Richard Jordan KCMG** (hereinafter referred to as **Sir Frederick**) and other Judges of his era provide obvious subjects. This is especially so in the case of **Sir Frederick**. Most judges present tonight have probably had the need at some stage to read his judgments published in the State Reports between 1934 and 1949. If so, you would have great respect for his legal learning, his judicial excellence and his superb style of writing judgments. Also, most would have heard stories about his general demeanour in public but very little about his private life to which I will devote the greater part of my address. I will also speak briefly about several judges of his era who were not mentioned by **Tom Hughes AO QC** in his address last year.

5 Any study of Judges of this period requires brief reference to the conditions then prevailing.

6 At the outbreak of World War II in September 1939 Australia was emerging from the Great Depression of the 1930s. Only people living in this decade can understand fully the dreadful and devastating effects the Depression had on our nation and its people.

7 When I became Associate to **Sir Frederick** in June 1943, the NSW Bar comprised approximately 34 silks and 255 juniors of whom approximately one-third were engaged in Defence Service. One of the younger silks then was **Garfield Barwick KC** (Chalfont

Chambers). His successful challenges to the validity of the National Security Regulations brought him into prominence. He was a most persuasive counsel who appeared in all Courts and all jurisdictions from Courts of Petty Sessions (now Local Courts) to the Privy Council. He possessed the great ability to present succinct submissions in Court in a pleasant conversational style which seemed to appeal to judges. He was never verbose in his presentations to the Court. He always came quickly to his main points and when he was satisfied the Court had understood his submissions he resumed his seat. Later he served as President of the Bar Council and along with **Ken Manning** (later Manning J) and others he was instrumental in acquiring the land in Phillip Street for the building of Wentworth Chambers.

- 8 He embarked upon a political career in the 1950s as a member of the House of Representatives and held several Ministerial portfolios. He was appointed Chief Justice of the High Court of Australia in April 1964 on the retirement of **Sir Own Dixon PC, GCMG, OM**.
- 9 In the 1940's barristers' Chambers were located in Phillip Street between Hunter and King Streets. The only buildings remaining today in that section are the APA Building on the corner of Martin Place and Phillip Street and the adjacent old "Sun" newspaper building.

- 10 In June 1943 the Supreme Court comprised the Chief Justice and 10 Puisne Judges who had chambers in the old Supreme Court building and the Barracks buildings. The Chief Justice occupied Chambers adjacent to the Banco Court. **Justices Davidson, Halse Rogers, Street, Owen, Maxwell, Edwards and Herron** also had chambers in this building, while **Justices Nicholas CJ in Equity, Bonney and Roper** had chambers in the Barracks building. The salary of the Chief Justice was then £3,500 (\$7,000) pa while the salary of a Puisne judge was £2,600 (\$5,200) pa. When I was appointed to the Court in January 1970, my salary was approximately \$17,500 pa.
- 11 **Sir Frederick** arrived in Australia at the age of 5, with his parents from England. He was educated at Sydney Boys High School. On leaving school he was employed in the NSW Public Service until 1907 during which time he graduated in the faculties of Arts and Law (Second Class Honours). He practised at the Bar, mainly in Equity while lecturing in several subjects for many years at the Law School, taking silk in 1928 and marrying in the same year.¹ On 1 February 1934 he was sworn-in as Chief Justice. He was appointed Lieutenant Governor in 1938.
- 12 **Sir Frederick** presented very differently in his public and his private life. He was seen publicly by the legal profession in the 1940's as a cold and chilling person. A high pitched voice, thin-rimmed glasses and a small grey moustache added to the severity of his public

¹ Australian Dictionary of Biography, vol 9 (1891-1939) pp 522-523
The Australian Encyclopaedia, vol V p 145
Portraits of the Chief Justices of New South Wales (1824-1977) by J M Bennett pp 43-45

presentation. When walking in public, he looked straight ahead seemingly not observing anything on either side. He also presented as an aloof figure in Court where he was well respected and feared for the questions he asked to elucidate or destroy a submission.

13 In and away from Chambers with family and friends, he was a much different person. He was quietly spoken, of calm disposition, kind and relaxed but not much given to expressing emotion. Outside this scene and in public, he was less relaxed and appeared almost ill-at-ease at times.

14 At a gathering in the Banco Court on 8 November 1949 to pay tribute to **Sir Frederick, Acting Chief Justice KW Street** spoke of the private man that so few knew: "He was a reserved man and an undemonstrative man. He did not wear his heart upon his sleeve; but beneath the outward form he was intensely human and we, his brethren who came closely in contact with him, knew also the man of kindly nature and innate courtesy, of broad sympathy and tolerant understanding, who lived behind the scholar and the lawyer." (1949) 49 SR. For a further tribute to **Sir Frederick**: see the foreword by Sir Lionel Lindsay to the publication of **Sir Frederick's** personal views on many subjects under the title "Appreciations and Parallels" (1950) Supreme Court Library Rare Books Section. **Sir Frederick's** comments therein which were apparently written for his own edification provide excellent reading. Time constraints do not allow more reference to them.

15 **Sir Frederick** maintained unremitting self discipline in his working life as a judge. In my 3 years with him he did not take holidays away from Sydney. He spent a good amount of his Court vacations in Chambers, reading and noting up recent law reports and publications and noting-up textbooks. He was given all appeal books a week or more prior to the scheduled hearing date in the Full Court. Without any pre-hearing submissions from counsel he prepared in many cases a pre-judgment often in shorthand from which he was able in many appeals to give an extempore judgment or to form the basis of a judgment which he would dictate to a court reporter soon after the completion of the appeal.

16 By modern standards the life of a Chief Justice in the 1940's was one of startling administrative simplicity. **Sir Frederick** was not provided with a car as part of his office. On most working days he travelled to and from the Court by tram from Vaucluse. He used this time to read foreign language classics. In the late afternoon, usually around 5.15 to 5.30, he left Chambers and boarded a tram in Queen's Square to travel to the terminus at the western end of King Street for the purpose of being assured of a seat for his return journey home.

17 **Sir Frederick's** obvious courtesy and respect for his Associate's own time was greatly appreciated. He never called upon me or even accepted my offers to undertake tasks outside my normal working hours. On those days when **Sir Frederick** and I were in Chambers at the same time during vacation, my offers to do any messages for him

or to purchase his lunch, were always very courteously rejected. He would subsequently go out and do his own shopping.

- 18 Under rationing provisions pursuant to the National Security Regulations, **Sir Frederick** was entitled to a specified number of petrol ration coupons per month which were delivered to him. It was my duty to receive and sign for them. On taking them to **Sir Frederick** he usually retrieved any unused coupons - quite often all the month's quota - from a drawer and destroyed them in my presence.

- 19 When he was the Lieutenant Governor exercising all the powers of a Governor, occasions arose when he asked me to select one or two bottles of wine from the Government House cellars for an official dinner party at his home. It was not unusual for one or both to be returned to the cellars.

- 20 Surprising as it may now seem, in a time of actual war, security measures to protect the Chief Justice and Judges were virtually non-existent. Elderly Sheriff's officers attended in the Full Court when in session and for limited periods around the Court building. It was not uncommon for the officers to fall asleep in Court and occasionally to snore and receive judicial attention. There was also a resident Court keeper who kept several beehives in the Chief Justice's garden. Otherwise there was no Court security at night.

- 21 The Chief Justice's Chambers were actually then easily accessible to anyone entering the building from King or Elizabeth Streets. On one occasion, a man found his way to my room adjacent to the Chief Justice's room to air a grievance and a desire to speak with the Chief Justice. After considerable attention and persuasion I directed him to the appropriate Authority to deal with his complaints. Later the same day I received a telephone call from an officer of that Authority informing that this man had duly arrived and had threatened him with a knife.
- 22 Even more surprising to current citizens, security at Government House at this time was no better. Apart from a Police officer who manned the main gate and patrolled the grounds day and night there was in fact no security at all.
- 23 In the 1943-1946 period **Sir Frederick** presided in the Full Court and Court of Criminal Appeal, sitting generally with Davidson, **Halse Rogers** until his death in 1945, and Street JJ. In certain types of appeals, e.g. Equity, Divorce, a Judge sitting in the relevant jurisdiction was called up.
- 24 It may have intrigued some of you as to why it was that **Sir Frederick** never sat on the several appeals in the celebrated case of *Hocking v Bell*. Ordinarily it would have been expected that the Chief Justice would do so in such a case. His personal friendship with the defendant, Dr Bell, was the reason for this. The case which

commenced in January 1941 ultimately took almost seven years to determine.

25 **Sir Frederick's** patience was often tried, but his understanding nature prevailed. By 1943 Mr **C E Weigall KC** was an elderly and very deaf Solicitor-General. When he appeared for the Crown in the Court of Criminal Appeal he often spoke very loudly as his instructing officer conveyed to him in writing a question from the Bench. Typical responses from Mr **Weigall** were "what do they want to know that for?", "that's trite law" and "that's nonsense". **Sir Frederick** remained mute awaiting a response to the Court's question.

26 **Sir Frederick** also asserted the independent role of Judges. To many of you I expect that the following incident may be familiar. Before travelling to a Circuit sittings in Grafton with **Sir Frederick**, I applied to the Accountant of the Department of Attorney-General for the approved daily rate of £7.10 (\$15.00) to cover accommodation with a private dining and sitting room and meals for the Chief Justice, the tipstaff and myself. On return from the Circuit sittings, the Accountant wrote to me requesting an account as to how the daily allowance had been spent. I showed the letter to **Sir Frederick**. He said "Don't they know it is my allowance. Tell them I have no intention of accounting as to how I spent my allowance." I carried out instructions. Nothing further was ever heard of the matter. As a Judge I always followed **Sir Frederick's** example in this matter.

- 27 Travel to and from Circuit Courts in the 1940's was generally by train. Before departure from Central Station **Sir Frederick** and staff were met there by the Station Master who escorted us to a reserved compartment (a sleeping one where appropriate). Apart from occasional conversations during the journey, **Sir Frederick** read Italian, German or French classics pausing from time to time to consult a dictionary and make a notation in the book.
- 28 The life of a Chief Justice in the 1940's was quite monastic. On arrival at a Circuit Town **Sir Frederick** was met by a senior police officer, either a Superintendent or an Inspector, and escorted to a police vehicle for travel to an hotel where, with some difficulty for the proprietor, he was provided with a room for private dining, a lounge room and a bedroom. On the return journey, the Central Station Master met him at the train and escorted him to his car.
- 29 During Circuit sittings I accompanied **Sir Frederick** on walks around the town - always without any escort or security. When discussions during those occasions precipitated a recall of a poem or classic work he had read, a recital of a poem or work would often ensue. He had an excellent recall of works he had read. These occasions demonstrated his great ability to relate a good story, recite a poem at length and his dry sense of humour.

- 30 In the 1940's a considerable amount of Court time was expended in appeals by way of the prerogative writs, prohibition, mandamus, certiorari and statutory prohibition, mainly involving the National Security Regulations. In many of his judgments **Sir Frederick** dealt severely with them.
- 31 **Sir Owen Dixon**, when retiring from the High Court in 1964, said that one tragedy in the life of that Court was the failure of the Commonwealth Government of the day to appoint **Sir Frederick** to it. Sir Owen then added something about **Sir Frederick** that has always seemed odd to me and not a sound insight into **Sir Frederick's** personality or legal outlook. He said: "This highly scholarly man and very great lawyer eventually took some queer views about federalism. But I do not think he would have taken them if he had been living amongst us": ((1964) 110 CLR p xi).
- 32 There was a view abroad in the legal folklore of the 1940's and even later that **Sir Frederick** was a States rights supporter and opposed to Commonwealth rights. Much of this view appears to be due to the views he expressed about the National Security Regulations during the World War II years.
- 33 **Sir Frederick** never discussed with me his views on federalism or State rights. I have thought about this question over the years. I think that his judgments concerning Commonwealth delegated legislation through the National Security Regulations resulted solely

from his interpretation of these Regulations, his strict requirement for regulations to be drafted with complete clarity and precision, especially in cases affecting the civil rights and liberties of the individual. In argument it was clear that he was strongly opposed to “sloppy” and imprecise drafting. It must have been painful for him as an Australian Judge to make such adverse decisions at a time when Japanese Forces were carrying the war to the Australian mainland. In my view he made his decisions on his conscientious interpretation of the law irrespective of whether they were made in peace or in war time. Nothing he said either privately or in the course of argument in Court indicated he was moved by any other doctrines.

34 To him, the rule of law and due process were not suspended during a war. No doubt, if the said Regulations had been drafted without ambiguity and with lucidity he would have upheld them. I, therefore, respectfully do not agree with a view that **Sir Frederick’s** decisions were based on a preconceived opinion of Federalism or State rights.

35 **Sir Frederick** was always friendly with and most accessible to other judicial officers. High Court **Judge Sir George Rich**, who was then in his eighties, telephoned and also called upon **Sir Frederick** at regular intervals. He was always available to members of the Supreme Court, either in person or on the telephone. Occasionally, a member of the District Court called upon him. I well remember **Judge Frederick Berne** calling on **Sir Frederick** to lodge a complaint

about a group of drunken and rowdy soldiers kicking in the door of the sleeping car of the train conveying him to Sydney from Narrandera. He was received and listened to with much patience.

36 His social life was confined to formal receptions and dinners at Government House and dinners with close friends at his home. Although he was a member of several Clubs, he never seemed to use them. There were then no judicial conferences, legal conventions, seminars, Bench and Bar dinners, or Bar and solicitors functions requiring his attendance e.g. the Law Society's opening of Law Term dinner.

37 **Sir Frederick** took good care of his health by modern standards. He enjoyed swimming at Nielsen Park at Vaucluse in summer and sword fencing with a Captain Stewart in the city. Often when he returned to Chambers after fencing, usually about 5.30, he looked as though he had experienced vigorous exercises..

38 **Sir Frederick** never discussed religious matters with me, except when he expressed his doubts about whether he had the requisite religious qualifications to be the god-father at the baptism of a friend's child years previously at the same Catholic Church where Margaret and I were married in 1946. He and **Lady Jordan** honoured us by attending our wedding. He avoided discussing political issues and maintained only formal meetings with politicians. An exception was with the **Honourable Reg Downing MLC**, Acting Attorney-

General in the absence of the **Honourable C E Martin KC** on war service. **Sir Frederick** seemed to have a good rapport with him.

39 With the departure of the Governor of the State, **Lord Wakehurst**, in June 1945, **Sir Frederick** assumed that office during the inter-regnum. This was not expected to be a long period. He did not take up residence at Government House at all. However, the House was kept open with a restricted domestic staff, an aide-de-camp, a private secretary and a chauffeur. I was appointed his private secretary. The Official Secretary resided in an adjacent building. **Sir Frederick** used the House for late afternoon receptions, levees, occasional official dinners, especially for formal calls by diplomatic and consular members of foreign countries and distinguished visitors to the State, mostly high-ranking British and American military officers. Executive Council meetings were held in the Chief Secretary's building in Macquarie Street and all official documents were signed by him either at Government House or the Supreme Court.

40 **Sir Frederick** carried out the dual duties of Governor and Chief Justice including attendance at formal public functions e.g. Anzac Day ceremonies, the opening of the Graving Dock by the **Duke of Gloucester**, special church services, etc. His gubernatorial duties had minimal effect on his court work

41 **Sir Frederick** was not a horse racing enthusiast. During my two years as his Associate he never visited a racecourse. However, later when fulfilling his Vice-Regal duties he attended Royal Randwick on special days as a matter of duty. This required him, his staff and guests to sit in a small open Vice Regal enclosure about one metre in height situated in the large public stand, with members of the public closely surrounding the enclosure and again without any security. He was not a “punter”, only occasionally sharing a five shillings tote bet with **Alexis Albert**, an aide-de-camp or with me. However, he had a good knowledge of the various methods of betting. He never followed a race with binoculars and during a race it was not unusual to observe him looking in the opposite direction to the winning post as the horses approached it. He also sashed the winners of the main races.

42 **Sir Frederick** wore good quality suits mainly tweed and a grey felt hat which was old and well-shaped to meet his tastes. He never wore a homburg hat which was fashionable for men in that era. On commencing his inter-regnum, he was prevailed upon to buy a new felt hat which he wore for a short time until one day his old one reappeared at Government House and remained first choice.

43 Delay in the appointment of a Governor to replace **Lord Wakehurst** was of considerable concern to **Sir Frederick** and the subject of many cables between the Governments of New South Wales and the United Kingdom. I was not privy to them, but it was reported at the time that the respective Governments were unable to agree on an

appointment. It was thought that the British Government wanted an English person, while the State Government wanted an Australian for the office. His niece informed me that **Sir Frederick** had declined the offer of an appointment. The Sydney Morning Herald reported on 26 February 1946 that it was rumoured **Sir Frederick** had informed the Premier, **Mr W J McKell** that he wished to be relieved of the office of Lieutenant Governor as soon as possible. Finally, after almost fourteen months inter-regnum, a consensus was reached with the appointment of Lieutenant-General Sir John Northcott, then Commander of the British Commonwealth Occupation Forces (BCOF) in Japan following its surrender in August 1945. When **Sir John Northcott** was sworn in as Governor of the State at Government House by **Davidson J** on 1 August 1946 **Sir Frederick** was happy to devote himself once more solely to Court duties.

44 **Sir Frederick's** health began to decline from 1946 and it was not aided when in August 1947 he was knocked down in Elizabeth Street Sydney by a bicycle. According to his niece, he had planned to take an overseas holiday on his retirement which was overtaken by his death on 4 November 1949 at the age of 68 years.

45 Because of **Sir Frederick's** judicial pre-eminence there has been a regrettable tendency for accounts of his life to overlook other judges of the period. I will speak now briefly about some of them. Another outstanding Judge in 1943 was the **Senior Puisne Judge Colin Davidson**, who had been a member of the Court since February 1927. His judgments and Reports as a Royal Commissioner are

testimony of his judicial qualities. Except for a short history by his sister **Phyllis Davidson** (Supreme Court Library 923.43 Bay 900) very little has been written about him. **Miss Davidson** recorded that their father, a Mudgee solicitor, had been a class-mate at the West Maitland High School with **Samuel Griffith** (later Sir Samuel Griffith, first Chief Justice of the High Court). She also claimed that he was the first graduate of the Sydney University Law School to be appointed to the Supreme Court. He was quietly spoken, always courteous, patient and easily accessible. I found this to be the case when I was reporting Full Court judgments for the State Reports and Weekly Notes in the 1940's. In what was almost an item of judicial uniform during this period he wore a Homburg hat. He was highly regarded by his judicial colleagues and members of the Bar.

46 In 1945-1946 when the Coal Industry was experiencing considerable industrial turmoil **Davidson J**, who had acquired great knowledge of the Industry over several years was again called upon to conduct a Royal Commission into that Industry. His Report was well received.

47 Following the death of **Professor Archie Charteris** in late 1940 and the retirement of **Professor Sir John Peden**, from the Law School in 1941, **Davidson J**, then a member of the Sydney University Senate, and two fellow members of the Senate, **Justice Sir Percival Halse Rogers** (Chancellor) and **Sir Henry Manning**, were outvoted in their stand to defer any permanent appointments to replace **Charteris** and

Peden until after the War. After their wise counsel was ignored, all three resigned from the Senate.

48 In the 1943-1946 years **Davidson J** sat regularly in the Full Court. He wrote excellent judgments, sometimes in agreement with and at other times in dissent from the Chief Justice. The Law Reports from 1927 to 1948 are a record of most of his leading judgments. I feel that they have never received the full recognition which they deserved, no doubt due to the leading judgments of the Chief Justice. Like **Sir Frederick** he was dedicated to the study and practice of the law and his judicial office. Like other judges of his era he took no part in any public affairs or undertakings. He retired from the Bench in November 1948 (not 1949 as appears in the Law Almanac). He was knighted in 1952 and died in 1954.

49 **Justice Percival Halse Rogers** was the third most senior member of the Court in 1943 having been appointed in 1928. I remember him as being a rather rotund figure. It is recorded he had been a Rhodes Scholar studying at Oxford University. He was also Chancellor of Sydney University from 1936 to 1941 when he resigned as mentioned earlier.. He sat mostly in the Full Court. He was always alert and courteous on the Bench and generally relaxed. He died suddenly in office in October 1945.

50 **Ernest David Roper** was appointed a judge of the Court at the age of 36. He was the Judge of the Land and Valuation Court in 1943.

Later he was appointed Chief Judge in Equity. **Roper J** was one of the more regular visitors to **Sir Frederick** in chambers. They had a firm friendship. Their respective spouses were close friends. **Roper J** who was about 6 feet in height walked with a measured and purposeful gait. He had the reputation of being dispassionate and judicial but almost to the point of being remote. He was always courteous and patient in Court rarely interrupting proceedings. This was not always appreciated by counsel who were thus unable to assess the Judge's likely thinking. He also had the reputation of being a brilliant mathematician. Although I never saw it myself, it was often said he engaged himself with mathematical problems during Court hearings. From time to time he was called to sit in the Full Court. He died in office in June 1958.

51 **Reginald Schofield Bonney KC**, who practised in patents, trademarks and copyright matters – a rather small jurisdiction in the 1930s – was appointed the Judge in Divorce in August 1940. He was a quietly spoken “old worldly” gentleman who had a keen sense of the dignity of his Court and who conducted it with the utmost decorum and adherence to protocol. He was always courteous to members of the profession, litigants and witnesses. He also sat as a member of the Full Court in Divorce Appeals.

52 An incident which was the subject of comment at the time illustrate the Judge's keen sense of judicial dignity. It occurred when he was being driven in his car by his tipstaff to a circuit sittings of the Court at Newcastle. On arrival at the boundary of the City of Greater

Newcastle his vehicle stopped and he refused to proceed without a police escort into that City. There he waited its arrival.

53 Another Judge of the time who is not much remembered now was **Henry George Edwards**, who had come to the Supreme Court from the Industrial Commission of New South Wales. He was a Judge of the Supreme Court from 1940 to 1952, sitting in Divorce. When other judges of the Court who had been involved in earlier hearings of *Hocking v Bell*, or who had been excused from sitting due to friendship with the defendant, **Edwards J** was called upon to preside at the re-hearing with a jury in 1944. In fact he had no recent experience in conducting common law trials. The hearing occupied 36 days, resulting in a verdict for the plaintiff for £800. Any apprehension that may have been felt about his lack of recent experience in civil hearings proved ill-founded. Successive appeals against the verdict were finally dismissed by the Privy Council which referred to his Honour's careful summing-up: *Hocking v Bell* (1947) 75 CLR 125 (Privy Council).

54 Another Judge of the 1943-1946 years was **Harold Sprent Nicholas** (1938-1948), Chief Judge in Equity and grandfather of **Henric**. My meetings with him were infrequent. His chambers (now demolished) were located at the rear of the Barracks Building. He called on **Sir Frederick** at intervals, but communications were mostly by telephone. He also sat in the Full Court mostly with **Sir Frederick** or **Davidson J**. I remember him as a tall gentleman who was courteous. Unlike **Justices Davidson, Owen and Street**, who

generally wore Homburg hats with dark suits, **Nicholas J** was seen in a grey felt hat whose brim was even more wavy and distorted than **Sir Frederick's**.

55 In 1943, the junior Judge was **Herron J** who was appointed in February 1941. I had the great pleasure of being sworn-In by him as a Judge in February 1970. He was a competent civil and criminal trial Judge with twenty-one years judicial experience when he was appointed Chief Justice in 1962 following the resignation of **Dr H V Evatt** as Chief Justice. He was an avid sportsman and he also held the presidency in numerous sporting bodies while a Judge, e.g. Australian Golf Club, NSW Rugby Union and the Cricket and Sports Ground Trust.

56 This gregarious and very well-known Judge had the ill-fortune to serve part of his time as Chief Justice in one of the most disruptive periods of the Court which had serious and long term repercussions for relationships within the Court.

57 In 1965 the recently elected Coalition Government established by legislation a Court of Appeal with a President as its head and next most senior Judge after the Chief Justice, and six Appellate Judges. The existing Full Court was abolished. It was the first Court of its kind in Australia. The new Court in itself was not so controversial, but it became so when the names of the first Judges nominated for the Court were announced.

58 Judges had always taken precedence in order of seniority on the Bench. (Note: Judges' Commissions). The elevation of **Wallace J**, a member of the Court since March 1960 to the office of President and a junior member of the Court to many Judges, especially the senior puisne Judge, **Sugerman J**, created a chasm in the Bench. Relationships and friendships were strained, if not shattered. Several Judges would not attend formal events in the Banco Court if certain members of the Court of Appeal were in attendance. When I was sworn in as a Judge in February 1970, a member of the Court then with whom I had read on commencing practice in 1946 and a few other disaffected Judges did not attend. All had communicated with me to explain their absence.

59 The extent of the chasm was further demonstrated by a small but important arrangement within the Court. A room, formerly a witness room for the Banco Court, was provided as a robing room for **Wallace P** when he sat in the Banco Court or No 1 Court, then used as the President's Court, thereby allowing him to avoid contact with other Judges in the Consultation Room.

60 With the retirement of **Wallace P** in January 1970 and the appointment of **Bernard Sugerman JA** as President, there was the basis for better relationships within the Court although a few Judges still maintained strong opposition to some members of the Court of Appeal and would never sit en banc with them

- 61 **Bernard Sugerman**, who had been my lecturer at the Sydney Law School in the 1930s in Contracts and Torts, had appeared regularly for the Commonwealth Government in the Full Court and the High Court,. especially in appeals challenging the validity of National Security Regulations.
- 62 He was elevated to the Commonwealth Arbitration Court in 1947 before accepting an appointment later in the same year to the Supreme Court as a Judge in the Land and Valuation Court. He held that office until 1961 when he transferred to the Equity Jurisdiction.
- 63 **Sugerman P**, respected highly by his colleagues, was a kind and generous man who accepted with good grace and dignity being passed over as the first President of the Court of Appeal. It was not unusual for him to deliver, both at first instance and in the Court of Appeal, an extempore judgment for an hour or more, with frequent references to law reports, evidence and exhibits. In delivering his lectures and judgments he had the habit of moving his jaws and mouth in a way which gave the appearance he was chewing on his thoughts before delivering them in a clear but ponderous tone. He was hardworking always approachable and ready to advise and assist his colleagues. He made a great contribution to the Court and the law as his many judgments attest.

64 **Gordon Wallace P** (later Sir Gordon) who had practised first as a solicitor in Albury came to the Bar in 1928 where he established a big practice in Appellate Courts and in Equity and in Liquor matters. As a judge in 1960 he sat in the Common Law jurisdiction before being elevated to become the first President of the Court of Appeal over many of his more senior judicial colleagues. As mentioned earlier this appointment precipitated a deep division among members of the Court, strong undercurrents and lack of co-operation and harmony. It was a trying time for all Judges including **Wallace P**.

65 I have touched briefly upon the lives of only a few former Judges of the Court. From my enquiries at the Supreme Court Library, there is a dearth of material available about Judges of this Court. Maybe this is the way former and current Judges want it! However, I think not. Former Judges including myself and probably current Judges tend not to acknowledge the importance of providing, maintaining and keeping an up-to-date personal history for the Court. This could be a future challenge for the Court and its Judges.
