**No. 32 (Spring 2015)**

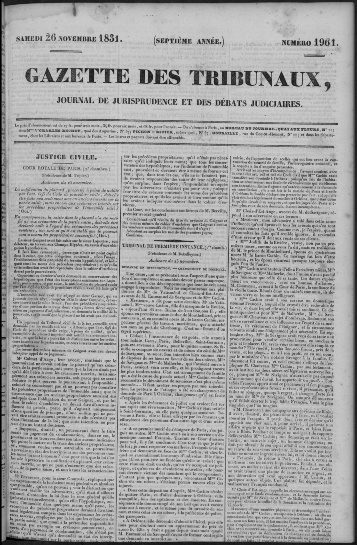
**History reports itself**

It’s not quite Magna Carta, but we have another anniversary this year, the tenth anniversary of the passage in NSW of the *Civil Procedure Act*. The Commonwealth and other States and Territories have passed cognate legislation, each focussing on a variant of “the overriding purpose”.

While the anniversary was noted in the last Flyer, it is worth recalling rule 57 of the 1826 Supreme Court Rules, introduced by Sir Francis Forbes:

The foregoing rules and orders, being made for the convenience of the parties in the ordinary course of a proceeding in the said Court, and with a view to promote economy and dispatch by avoiding all unnecessary and vexatious forms, in the spirit of such view and in furtherance thereof, the Court may, from time to time, dispense with any particular rule that may be attended with inconvenience or hardship to either of the parties, and may make such special orders in any particular case, or in any stage of the proceedings, as shall be within the powers of the Court and may facilitate the ends of justice.

A later Chief Justice Sir Alfred Stephen was perhaps of the plus ça change, plus c’est la même change school and not revealing any particular toryism when he said "... the so-called system of Chief Justice Forbes [was] really and in truth no system at all."

For those interested in degrees of separation, the person who coined the expression was Jean-Baptiste Alphonse Karr; Alphonse Karr was one of the names mentioned in the advertisement for a legal history conference in France earlier this year to talk about the "Gazette des Tribunaux" – which newspaper he appears to have described as "an exhibition in effigy to fifteen thousand copies spread throughout France and abroad”; the advertisement was on the webpage of ESCLH, the European Society for Comparative Legal History; and the Forbes Society is duly listed as one of the associates of the society on the [the ESCLH's homepage](http://esclh.blogspot.hk/2014/03/call-for-papers-conference-on-gazette.html). As can be seen from the Gazette’s subtitle, it was more than either a law journal or a case reporter. It was very much a specialist newspaper focussing on crime and justice. I understand it provided considerable fodder for novelists of the day.

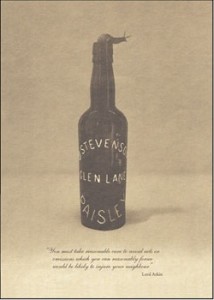
**David Ash, Editor**

**The 2015 Forbes Lecture in Sydney**

This year’s annual Forbes Lecture will be presented by Emeritus Professor David Barker on Wednesday 11 November 2015. The topic is the History of Legal Education in Australia.

**The Honourable Justice Peter Applegarth on Lord Atkin in Brisbane**

The Selden Society Australian Chapter is presenting a paper by The Honourable Justice Peter Applegarth on Lord Atkin in Brisbane on Thursday 15 October 2015, 5.15pm for 5.30pm. The venue is Banco Court, Level 3, Queen Elizabeth II Courts of Law, 415 George Street Brisbane.

Brisbane, of course, is where the where the forensic father of opaque ginger beer bottles was born in 1867.

RSVP by 8 October 2015 [**events@sclqld.org.au**](mailto:events@sclqld.org.au). There are drinks after the lecture on the Banco Court terrace.

**An ANZAC symposium in Armidale in November**

Law, War and Memory: The Nation, the Profession and Defence. This is the title of a symposium over two days including Remembrance Day in Armidale in November. For all details including how to register, click [here](http://www.une.edu.au/about-une/academic-schools/school-of-law/centenary-of-anzac-legal-history-symposium). The program sounds exciting; the site sums it up:

The School of Law at the University of New England, together with the Centre for Military and Security Law at the Australian National University, will be hosting a two day military legal history conference in Armidale to mark the centenary of ANZAC. Legal history is a particular focus of this Law School while military law is the focus of the Centre. We are bringing together both legal scholars and historians to consider the relationship between law, war and the defence of Australia and New Zealand from the pre-Federation period to the present day. The conference will be held on November 10th and 11th and will include an observance of Remembrance Day. There will be a formal dinner at Booloominbah, the historic original White family home at UNE, on the Tuesday 10 November.

**Constitution patriotism in Adelaide**

On 17 & 18 September 2015, I was delighted to be one of the paper-givers at a conference at the University of Adelaide, “Constitutional Patriotism: Founding documents and the emotions from Magna Carta to the Declaration of Human Rights”. Professor David Lemmings & Emeritus Professor Wilf Prest organised the conference, thus making it squarely in William Blackstone territory! For abstracts and biographies of the speakers click [here](http://www.historyofemotions.org.au/media/255272/Abstracts.pdf).

**The Block and the land of coincidence**

The Block in Sydney’s Redfern is part of Aboriginal Australia’s heritage. The Whitlam government facilitated its purchase by the Aboriginal community in 1973.

Recently, the Block was a focal point of litigation in the NSW Supreme Court.

An aside emerging in the hearing was that the Block was part of a Crown land grant of 52 acres [21 hectares] to an ex-convict called William Hutchinson in 1819. What makes the aside interesting is that Mr Hutchinson was later granted another 1,400 acres, the nearby Waterloo Estate, which in 1889 became the land in dispute in *Cooper v Stuart*, a high point in the articulation of doctrine we now know as terra nullius, the legal fiction exposed in the 1992 *Mabo case*. Almost adjoining pieces of land which together form part of an often volatile and always fascinating history.

**Winter Quarters[[1]](#footnote-1)**

*In 1815*

On 20 November, the treaties known collectively as the 2nd Peace of Paris were concluded, Austria’s Klemens von Metternich helping to create a “Concert of Europe”.

*In 1865*

On 6 November, the Confederate ship Shenandoah under Captain James Waddell surrendered in Liverpool, England, after attacking Yankee commercial shipping off the coast of Alaska. It had sunk of captured 38 vessels, mostly New Bedford whaleships. The surrender of the Shenandoah was the last act of the US Civil War.

*In 1915*

On 21 September, Anthony Comstock, proponent of the 1873 US Comstock Law, an  Act for the "Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use", dies.

*In 1965*

On 28 October Pope Paul VI issued a decree, Nostra Aetate, absolving Jews of collective guilt for the crucifixion of Jesus Christ. On 27 July, President Johnson signed a bill requiring cigarette makers to print health warnings on all cigarette packages about the effects of smoking.

1. Usually, the Flyer draws the references from timelines.ws or from en.wikipedia.org. [↑](#footnote-ref-1)