



The Francis Forbes Society for Australian Legal History

ABN 55 099 158 620 ACN 099 158 620

ANNUAL REPORT 2012

ESTABLISHMENT

As was noted in previous Annual Reports, the Society has its origins in the Centenary Celebrations of the NSW Bar Association in 2002.

Its formation was publicized at the Centenary Dinner of the NSW Bar Association (on 31 May 2002) in connection with the publication of its Centenary Essays (Lindsay and Webster (*ed*), *No Mere Mouthpiece: Servants of All, Yet of None*) and Macquarie University's inaugural Macquarie Lecture (on 25 July 2002), and in publications ancillary to those functions.

COUNCILLORS

The inaugural meeting of the Council of the Forbes Society was held on Monday 5 August 2002.

The 'founding' members of the Society were the inaugural members of its Council and its Honorary Executive Director.

The inaugural members of the Council were:

- Professor Bruce Kercher of Macquarie University (President);
- Justice Keith Mason AC of the NSW Court of Appeal (Senior Vice President);
- Wendy Robinson QC of the NSW Bar (Junior Vice President);
- Geoff Lindsay S.C. of the NSW Bar (Secretary);
- Carol Webster of the NSW Bar (Treasurer);
- Michael Sexton, S.C., Solicitor General of NSW; Laurie Glanfield AM, Director General of the NSW Attorney General's Department; Mark Richardson, Chief Executive of the Law Society of NSW and Stephen Toomey of Toomey Pegg Solicitors (Members).

The Honorary Executive Director of the Society was, and is, Philip Selth OAM, the Executive Director of the NSW Bar Association.

Michael Sexton SC retired at the Annual General Meeting on 21 September 2005, and was replaced by Michael Pelly. Mark Richardson resigned on 27 March 2006 and was replaced by June McPhie, then President of the Law Society of NSW (appointed on 8 May 2006). June McPhie retired at the Annual General Meeting on 18 November 2008, and was replaced by Michael Tidball, the CEO of the Law Society of NSW.

In accordance with the Society's constitution all Councillors retire at this Annual General Meeting and are eligible for re-election. All Councillors have offered themselves for re-election.

CONSTITUTION

The Forbes Society was registered as a public company, limited by guarantee, on 2 January 2002, and is authorised under *section 150 Corporations Act 2001* (Cth), to dispense with the word "Limited" from its title. The registered office of the Society is care of the Office of the NSW Bar Association, Basement Level, Selborne Chambers, 174 Phillip Street, Sydney.

"The Francis Forbes Fund" was established by Deed of Trust executed on 12 February 2002. Under the Deed the Society is trustee of the Fund. The Society and the Fund are endorsed as "income tax exempt charities", and the Fund is endorsed as a "deductible gift recipient", under the *Income Tax Assessment Act 1997* (Cth).

The NSW Department of Sport and Recreation has issued an "Authority to Fundraise" to the Society under the *Charitable Fund Raising Act 1991* (NSW).

ANNUAL FORBES LECTURE

Since its foundation the Forbes Society has encouraged the study of the history of Australian law through an annual public lecture. The Forbes Lecture has become an important date in the legal calendar.

2012 Forbes Lecture

On 31 October 2012 Tony Cunneen of St Pius X College, Chatswood, delivered the 2012 Forbes Lecture (entitled "A Man for All Seasons: The Life and Times of Chief Justice Sir William Portus Cullen") in the Common Room of the NSW Bar Association. Cullen was Chief Justice of New South Wales between 1910-1925. He was the first Chief Justice of the Supreme Court of NSW who was born, and wholly educated, in Australia.

The Society was honoured by the service of the current Chief Justice of New South Wales, Justice TF Bathurst, as Chairman for the Lecture. His Honour was welcomed to that task by Emeritus Professor Bruce Kercher.

The Lecture brought to life the tumultuous times during which Chief Justice Cullen presided over the Supreme Court and, as a leading member of Australian society, helped to steer New South Wales through the traumas of World War I and a period of social upheaval that, at times, bordered on revolution.

The Society anticipates that the paper on which the Lecture was based will be published in the *Australian Law Journal*.

2011 Forbes Lecture

On 16 November 2011 Dr Shaunnagh Dorsett of UTS delivered the 2011 Forbes Lecture (entitled “Adapting Law to Circumstances of the Colony: The First Supreme Court Rules of New South Wales and New Zealand”) in the Common Room of the NSW Bar Association. Associate Professor Dorsett was introduced by Emeritus Professor Bruce Kercher, with Bernard Coles QC (the President of the NSW Bar Association) serving as Master of Ceremonies. The paper on which the Lecture was published as “Procedural Innovation: The First Supreme Court Rules of New South Wales and New Zealand” (2011) 35 *Aust Bar Rev* 128.

2010 Forbes Lecture

On 17 November 2010 Dr Lisa Ford of UNSW, delivered the 2010 Forbes Lecture (entitled “Thinking Big about Early NSW: Colonial Law in Global Perspective”) in the Banco Court, Supreme Court of NSW. The event was chaired by Justice Virginia Bell of the High Court of Australia. Dr Ford was introduced by Emeritus Professor Bruce Kercher, Dr Ford’s paper was published in (2011) 34 *Aust Bar Rev* 204.

The Lecture provided an occasion to celebrate the success of Lisa’s *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Harvard University Press, 2010). In 2008 it won the Thomas J Wilson Memorial Prize awarded by Harvard University Press for “outstanding content, style and mode of presentation” of a “first book” approved by that publisher for publication. In 2010 it won two further awards. First, it won the 2010 NSW Premier’s Prize for the best general history book. Subsequently it was awarded the 2010 Littleton-Griswold Prize for the best book in any subject on the history of American law and society, awarded by the American Historical Association.

2009 Forbes Lecture

On 5 November 2009 Associate Professor Mark Lunney of UNE, delivered the 2009 Forbes Lecture (entitled “the History of the Law of Tort in Australia”) in the Common Room of the NSW Bar Association. He was introduced by the Hon Justice Michael J Slattery with the Hon John Hamilton QC as MC on the

night. Professor Lunney's paper was published in (2010) 33 *Aust Bar Rev* 77 as "Federation and Beyond: What the History of Australian Tort Law can tell us".

2008 Forbes Lecture

On 6 November 2008 Professor Rosalind Croucher, then a Commissioner of the Australian Law Reform Commission, delivered the 2008 Forbes Lecture (entitled "150 Years of Torrens – Too Much, Too Little, Too Soon") in the Common Room of the NSW Bar Association. She was introduced by Anna Katzmann S.C., President of the Association. Her paper was published in (2009) 31 *Aust Bar Review* 245.

2007 Forbes Lecture

On 8 November 2007 Andrew Tink, formerly Shadow Attorney General in the NSW Parliament, delivered the 2007 Forbes Lecture on "The Life and Times of William Charles Wentworth" in the Bar Common Room. He was introduced by Anna Katzmann S.C., then President of the Bar Association. His biography of Wentworth was published by Allen & Unwin in 2009. His Forbes Lecture was published in (2009) 32 *Aust Bar Review* 316.

2006 Forbes Lecture

On 9 November 2006 Rosemary Annable presented the 2006 Forbes Lecture on the topic "A Setting for Justice: Building for the Supreme Court of New South Wales" in the Bar Common Room. It addressed the history of the architecture of the Supreme Court. A guided tour of the Old Supreme Court building conducted by the Court Architect Diane Jones preceded the lecture. In 2007 UNSW Press (in collaboration with the Attorney General's Department of NSW) published the long awaited book upon which Rosemary's Lecture was based. It bears the same title, *A Setting for Justice*.

2005 Forbes Lecture

On the 3 November 2005 the Hon Justice B H McPherson CBE, a judge of the Queensland Court of Appeal, presented the 2005 Forbes Lecture on the topic "New quilts from old rags", in the Bar Common Room. It addressed the reception of English law in Australia. In 2007, following his retirement from the Court of Appeal, Bruce published the major work which was in preparation at the time of his Lecture. It is entitled, *The Reception of English Law Abroad*. It was published by the Supreme Court of Queensland Library.

2004 Forbes Lecture

On 14 October 2004 Professor Bruce Kercher of Macquarie University and Tim Castle of the NSW Bar presented the 2004 Forbes Lecture, on the topic of "Bringing the Supreme Court to Order, 1828-1844", in the Bar Common Room. The lecture was chaired by the then Shadow Attorney General for NSW, Andrew Tink MP. It has been published by the Society.

2003 Forbes Lecture

On 15 October 2003, the Hon P.E. Powell A.M. QC presented the 2003 Forbes Lecture (entitled “The Origins and Development of the Protective Jurisdiction of the Supreme Court of NSW”) in the Banco Court. It has been published by the Society.

2002 Forbes Lecture

On 28 November 2002 I. M. Barker QC presented the inaugural Forbes Lecture entitled “The History of Trial by Jury in NSW” in the Banco Court, with Chief Justice Spigelman as the guest of honour and Professor Kercher as the Master of Ceremonies. It was published by the Society. It is now accessible on the Society’s website.

OTHER PUBLIC LECTURES, 2011-2012

2011/2012 was a busy year for the Forbes Society in the conduct of public lectures, and the like, in addition to the Annual Forbes Lecture. Importantly, the Society enjoyed the Inaugural JH Plunkett Lecture, planned as an annual lecture to be presented by the Attorney-General of NSW or a nominee of the Attorney.

On 24 March 2012 the Faculty of Law at the University of Technology, Sydney, the Forbes Society and the NSW Bar Association jointly conducted a Symposium on *The Legal Profession and the Defence Forces: Historical Connections*. The principal Event Co-ordinators were Associate Professor Shaunnagh Dorsett and Tony Cunneen. The symposium was held at UTS.

On 25 July 2012 Professor Graham Greenleaf of UNSW and the Australasian Legal Information Institute (better known as AustLII) delivered a public lecture (entitled “Law Reporting, and Legal Research, in an Electronic Age (and the Australasian Legal History Project)”) in the Common Room of the NSW Bar Association. The event was chaired by the NSW Attorney-General, the Hon. Greg Smith SC, MP.

On 9 August 2012 Professor Mark Lunney of the Law Faculty of the University of New England delivered a public lecture (entitled “Fleming’s ‘Law of Torts’: Australian-made or Foreign Import? Australia’s Role in Making the ‘King’ of Torts”) in the Common Room of the NSW Bar Association. The Society was honoured to have Justice James Allsop, President of the NSW Court of Appeal, serve as Chairman for the event. Professor Lunney was introduced by the Head of UNE’s Law School, Professor Michael Stuckey.

On 11 September 2012 the Society was honoured by Attorney-General Greg Smith’s presentation of the Inaugural JH Plunkett Lecture (entitled “The Contribution of Irish-Australian Lawyers to the Australian Legal System”) in the Common Room of the New South Wales Bar Association. The Lecture was chaired by Mr BA (Bernie) Coles QC, the President of the Bar Association. The paper on which the lecture was based was published in (2012) 36 *Aust Bar Rev* 110.

BRYSON LECTURE NOW PUBLISHED

On 30 August 2011 JP Bryson QC delivered a public lecture (on the History of Pleading in New South Wales) in the Common Room of the NSW Bar Association. The Lecture was co-sponsored by the Forbes Society, the Seldon Society and the Bar Association. Justice PW Young chaired the Lecture and provided a brief commentary on the paper presented. The paper was published as "Common Law Pleadings in New South Wales and How They Got There" (2012) 86 *Australian Law Journal* 452.

PUBLIC LECTURES FOR 2013

In 2013 the Society proposes to conduct, at least, its two major public lectures: the 12th annual Forbes Lecture and the second annual JH Plunkett Lecture.

The Society has also been invited to present an Oration at a dinner in the historic Forbes Town Hall on 24 October 2013 as part of the 2013 Kalari-Lachlan River Arts Festival.

The Society invites all members and friends to bring to attention potential lecturers and lecture topics.

THE LEGAL HISTORY DISCUSSION GROUP

From time to time the Society convenes for its members and friends a "Legal History Discussion Group" meeting in the premises of the NSW Bar Association. These meetings (held in the evening, commencing at 5.30pm and concluding no later than 7.00pm) provide a forum in which people interested in legal history can learn of recent developments, present papers and exchange ideas.

The Group has met twice during the past year, and it plans to hold its third meeting for the year at the conclusion of this year's Annual General Meeting of the Forbes Society on Tuesday 20 November 2012.

On 29 August 2012 Philip Selth OAM, the Honorary Executive Director of the Forbes Society and Executive Director of the NSW Bar Association, spoke about the career of Eric Miller QC (1903-1986) and Miller's appearance in defence of his cousin, PNG Captain John Joseph ("Mangrove") Murphy (1914-1997) at the latter's trial by court-martial for allegedly having given information to the Japanese while he was a prisoner of war. Murphy, a former PNG Patrol Officer and Coastwatcher on New Britain, was honourably acquitted of all charges, but not everyone accepts the court-martial verdict.

On 19 September 2012 the Hon. JP Hamilton QC spoke about the work of the Gold Commissioners in NSW between 1851-1874. John's paper was a product of his ongoing research as a PhD student at Macquarie University.

On 20 November 2012 the Group will hear from James Watson of Banco Chambers in Sydney and, subject to availability, Justin Gleeson SC (Acting Solicitor-General of the Commonwealth of Australia) about the legal history course taught by, or under the supervision of, James at Sydney Law School this year. That course is an important marker in development of Australian legal history as part of undergraduate studies at Australian law schools. James will also report upon a forthcoming publication, *Foundations of Australian Legal History*, to be published by Federation Press in 2013 in connection with the course.

The Group will meet in 2013 with a programme to be published early in the New Year.

The Society records its thanks to the organisers and presenters who made Group meetings possible.

THE SOCIETY'S WEBSITE

The Society's website (www.forbessociety.org.au) can be used as a means of publicising research projects, inviting comments on draft papers and publishing papers. Members and friends of the Society are invited to use it accordingly.

CURRENT RESEARCH PROJECTS

The Select Cases Project

The Select Cases 1828-1863 Project, undertaken by the Forbes Society in conjunction with Macquarie University, through ongoing work of Brent Salter and Emeritus Professor Bruce Kercher in consultation with Dr Lisa Ford, has advanced to a stage where, subject to funding, the Society can proceed to publication. The Society hopes to be able to move, in 2013, towards publication of two volumes following upon Kercher and Salter (eds), *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827* (Forbes Society, 2009/2010).

The Capital Punishment Database

The Australian Capital Punishment Database Project is continuing under the supervision of Tim Castle in collaboration with Dr Amanda Kladelfos. The Society hopes that the Project will result in an upgraded Database being posted on the website, with the assistance of the NSW Bar Association, in early 2013.

The Reminiscences of Sir Francis Forbes' Widow

Mandy Tibbey is continuing to work towards publication of *Sydney Society in Crown Colony Days: The Personal Reminiscences of the Late Lady Forbes*, the manuscript of which was prepared in or about 1875 by George Forbes. She is presenting a paper on Lady Forbes at the ANZLHS Conference in December 2012.

PUBLICATIONS

Recent Publications

The Forbes Society has assisted publication of two books in the past year.

The first was a co-publication with the Osgoode Society for Canadian Legal History. Professor John McLaren's *Dewigged, Bothered and Bewildered: British Colonial Judges on Trial, 1800-1900* (Osgoode/Forbes Societies 2011). It was favourably reviewed by Dr Matthew Stubbs in (2012) 35 *Aust Bar Rev* 302.

The second book was Dr Paula J Bryne's *Judge Advocate ELLIS BENT: Letters and Diaries, 1810-1821*, was published by Federation Press with assistance from the Forbes Society and the Public Purpose Fund. Emeritus Professor Bruce Kercher contributed a Foreword to the book.

Both books are being marketed by the Federation Press on behalf of the Forbes Society. Discounted prices are available to members of the Society.

Publications to Date

The Society's first publication, in 2003, was the 2002 Francis Forbes Lecture, given by Ian Barker QC, *Sorely Tried - Democracy and Trial by Jury in New South Wales*, released in October 2003. It is now out-of-print, but published electronically on the Society's website.

The Society has published five further books:

- The 2003 Francis Forbes Lecture, given by Philip Powell AM QC, *The Origins and Development of the Protective Jurisdiction of the Supreme Court of New South Wales*.
- *Dowling's Select Cases 1828 to 1844*, edited by T D Castle and Bruce Kercher - the notebooks of Sir James Dowling, the second Chief Justice of NSW.
- The 2004 Francis Forbes Lecture, given by T D Castle and Bruce Kercher, *The Dowling Legacy - Foundations of an Australian legal culture 1828 - 1844*.

- *Callaghan's Diary*, edited by J M Bennett AM, formally launched by Judge Greg Woods QC on 31 May 2006.
- *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827*, edited by Bruce Kercher and Brent Salter.

Availability of Forbes Society Publications

By an arrangement with The Federation Press, these publications can generally be obtained from that publisher.

Website: www.federationpress.com.au
 Email: info@federationpress.com.au
 Telephone: (02) 9552 2200
 Fax: (02) 9552 1681

Several *Forbes Lectures* and entries in the Society's *Australian Legal History Essay Competition* have been published in the *Australian Bar Review*.

THE FORBES FLYER

The Society's newsletter for members, the *Forbes Flyer*, is published quarterly via email and on the Society's web site. The Editor, David Ash, has developed what has become an entertaining, regular publication reaching out beyond the legal profession, to academia and the general public. Our thanks are due to David.

THE AUSTRALIAN LEGAL HISTORY SCHOOL ESSAY COMPETITION

The Inaugural Competition (2007-2008)

In March 2007 the Society launched the inaugural Australian Legal History School Essay Competition. The Society awarded a prize to James Triggs, a Year 9 student at Doncaster College in Victoria. His essay (entitled "Authority, Democracy and the Rule of Law") was subsequently published in the *Australian Bar Review* at (2008) 30 Aust Bar Rev 221) and on the Society's website.

The Second Annual Competition (2008-2009)

The second annual Essay Competition was launched in February 2008. Its theme was: "The Importance to the Effective Working of the Legal System of Individual Honesty, a Well-Informed Conscience and Trust". More specifically, the Essay Topic was: "Honesty, Legal Ethics and the Limits of a Guilty Secret". The Essay Question was: "**How can a lawyer defend somebody he or she 'knows' is 'guilty'?...What is it to 'know' that somebody is 'guilty'...Okay, to be more precise: What are, or should be,**

the ethical obligations of a lawyer acting for a client who, after being charged with a crime, makes a confidential confession of guilt'. Discuss this question from the perspective of a member of the community (who is not a lawyer) using examples drawn from the Dean Controversy (1895-1896) and/or Tuckiar's Case (1932-1934)". Potential Entrants in the Competition were assisted by a publication on the Society's website of Background Information Paper entitled, "A Question of Conscience, a Question of Trust".

The results of the Competition were formally announced on Australia Day, 2009. The Forbes Society awarded three prizes to essayists: two to Tertiary Students, and one to a Junior High School Student. The winners in the University or Tertiary Student Categories were Adam Arnold of the University of New South Wales and Sarah Dorn of the University of Melbourne. Adam's essay was published in the *Australian Bar Review* ((2009) 31 Aust Bar Rev 352) and on the website of *The Australian* newspaper (www.theaustralian.com.au/legalaffairs). The winner in the Junior High School Category was Ben Nam of Year 8 at St Pius X College at Chatswood in NSW.

The Third Annual Competition (2009-2010)

The third annual Essay Competition was launched in December 2008. Its Theme was: "A foundational objective of law in a modern democratic state is to serve, and protect, "the people" (all the people, not just a few) as the ultimate source of legal authority and, for that purpose, to adapt (in an orderly and principled way) to the changing needs of society". The Essay Topic was: "Land ownership, power and sovereignty (supreme authority in a system of government) as an example of law and society changing over time, and between places, with "new law" and "old" blending in ways imperceptible to a casual observer". The Essay Question was: "**Who owns this land, anyway? Discuss whether Australian history has any lessons for us, today, about the meaning or significance of "land ownership"**". Do so by reference to one or more of: (a) Australia as a "settled" or "conquered" territory, and Aboriginal Land Rights; (b) the land titles system (known as the "Torrens System") devised by Robert Richard Torrens; and/or (c) debate about whether Australia should, as a modern sovereign nation, be a republic".

Potential Entrants in the Competition were assisted by four publications on the Society's website of Background Information Papers entitled, "Living with Property", "Living in Community", "Folklore Rules: The Origins and Growth of Australian Law", "Snapshots in the Mirror: Paradigms for Australia Day" and "By your Deeds Be Known: Episodes in Australasian Legal History".

The results of the Competition were formally announced on Australia Day, 2010.

The Society awarded two prizes to essayists: both Junior High School Students. The principal prize was awarded to Isabelle Urbano, a student at Camberwell Girls' Grammar School in Victoria. Her essay, entitled "The Peoples Land" was published in the *Australian Bar Review*: (2010) 33 Aust

Bar Rev 70. A Commendation was awarded to Andrew Long of St Pius X College in Chatswood, NSW.

The Fourth Annual Competition (2010-2011)

The fourth annual Essay Competition was launched in December 2009. It was sponsored by the New South Wales Bar Association, the Law Society of New South Wales, the Law School at Macquarie University, Abbeys Bookshop, the Federation Press, State Records NSW and the State Library of New South Wales. It was also actively supported by the Legal Affairs Section of *The Australian* newspaper.

The 2010 Competition Theme was: “An important function of the law in any society is to reconcile tensions between self interest and altruism and between personal responsibility and a need to be mindful of the welfare of the community”. The Essay Topic was: “**How moral imperatives of altruism (regard for others as a principle of action) and autonomy (personal freedom and self government) play out in the law, using as illustrations: (a) the concept of an actionable ‘wrong’ (what lawyers call a ‘tort’) in the ‘law of negligence’ applied in civil proceedings between litigants asserting rights as individuals; (b) the criminal law, when the State seeks redress in court proceedings brought against an individual in the name of the public; and (c) the provision of a public apology for a ‘collective wrong’ by a parliament speaking in the name of the State and as a representative of its citizens”.**

The Essay Question was: “**Can Australian history teach us anything about the role of altruism and personal responsibility in the law? Discuss this question by reference to one or more of the following: (a) The civil law of negligence:** the idea (found in the law of negligence as applied by courts exercising civil jurisdiction) that one person might owe to another person a ‘duty of care’, a breach of which entitles the other person to an award of damages (compensation) in proceedings that he or she might institute against the negligent party, contrasting: (i) the famous formula of Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 at 580 (‘the Snail in the Ginger Beer Bottle Case’), for determining whether a ‘duty of care’ is owed by one person to another in the law of negligence; and (ii) the determination of the High Court of Australia (in *Cole v South Tweed Heads Rugby League Football Club Limited* [2004] HCA 29; 217 CLR 469 at [9]-[18] and [129]-[132] and *CAL No. 14 Pty Limited v Motor Accidents Insurance Board and Scott* [2009] HCA 47 at [49] and [52]-[57]) that publicans owe no general duty of care to patrons in relation to the amount of alcohol served and the consequences of its service, save in exceptional circumstances; **and/or (b) The Criminal Law of Homicide:** the idea that, outside war, no person is entitled to save his or her own life by killing another, an issue debated in *The Queen v Dudley and Stephens* (1884) 14 QBD 273 (and 560) at 286-288, where a court held that ‘necessity is no defence to a charge of murder’ and, accordingly, shipwrecked sailors bound for Australia were not entitled to cannibalise their cabin boy to survive; **and/or (c) Cases Involving ‘Collective Wrongs’:** the plight of ‘the Stolen Generations’ and ‘the Forgotten Generations’ to whom Australia’s Parliament delivered formal apologies on 13 February 2008 and 16 November

2009 respectively”. Potential Entrants in the Competition were assisted by an introductory outline on each of these three nominated subject areas.

The Prize for the 2010 Competition was awarded to Sarah Webster, a Year 10 student at Cecil Hills High School in Sydney, whose work was supervised by Mr Ashok Shandil, a History Teacher at the School. Sarah’s essay, entitled “Illustrations” was published at (2011) 34 *Aust Bar Rev* 231.

The Fifth Annual Competition (2011-2012)

The fifth annual Essay Competition was launched in early 2011. Essayists were invited to address a theme, topic or question of their own choice on “Australian Legal History” or to address the following question:

“Does Australian history offer examples of why the law does not recognise a contractual right to a reward unless a claimant has acted in reliance on the offer of a reward, but insists that anybody who makes an offer to the public must make good on the offer to anybody who does act in reliance upon it? Discuss this question by reference to one or more of *R v Clarke* (1927) 43 CLR 227; *Australian Woollen Mills Pty Limited v The Commonwealth* (1942) 92 CLR 424 at 456-560; or *Carlill v Carbonic Smokeball Company* [1893] 1 QB 256”.

The Competition presented several departures from previous Competitions. The first was an invitation to potential entrants to formulate their own theme, topic or question.

Prizes for the 2011 Competition were announced on Australia Day 2012. Major prizes were awarded to Christine Iacono of Macquarie University (in the Tertiary Students Category) and Ben Nam of Year 11 at James Ruse Agricultural High School (in the Senior Secondary School Students Category).

Christine’s essay addressed the question whether, from a legal perspective, the “Rum Rebellion” against Governor Bligh on 26 January 1808 can be justified. It was published in (2012) 35 *Aust Bar Rev* 307.

Ben’s essay addressed the Essay Competition’s set question about the law of contract as it relates to rewards offered to the public. Ben was a second-time winner of the Competition. In 2008, as a Year 8 student at St Pius X College, Chatswood, he won a prize in the Junior Secondary Student Category.

Christine and Ben each received a formal certificate, cash and a book voucher from Abbays Book Shop (www.abbays.com.au) as a personal prize for their respective essays. Ben’s School also received a cash award and an Abbey’s book voucher.

The Society awarded several Certificates of Merit to entrants in the Competition. In the Tertiary Students Category, Merit Certificates were awarded to Martin Bernhaut (Sydney University/College of Law), Rosa

Grahame (Australian National University), Leah Mills (University of New England) and Alice Rumble (ANU). In the Senior Secondary School Students Category, Merit Certificates were awarded to James Begeng, Michael Loomes and Ciaan Perera, all of Year 11 at St Pius College, Chatswood.

The Sixth Annual Competition (2012-2013)

The Sixth Annual Essay Competition was launched in January 2012. Essayists have been invited to address a theme, topic or question of their own choice on “Australian Legal History” or to address one of four set questions.

The first set question relates to the reception of English law in Australia. It is in the following terms:

“According to English common law, settled colonies (such as those in Australia were declared to be) received the laws of England as their foundation stones. The common law formula was that English laws were received so far as they were ‘applicable to their own situation and condition of any infant colony’. (William Blackstone, Commentaries on the Laws of England, 9th ed, 1783 (reprinted 1978) vol 1, pp 108-109.) In 1828, the formula was placed into statutory words by the Australian Courts Act (9 Geo 4 c 83) s 24. It provided that all the laws of England shall be applied in the courts of NSW and Van Diemen’s Land (Tasmania) ‘so far as the same can be applied in the said colonies’.

The common law and statutory expression thus both allowed some room for variations between colonial law and the laws of England. How far could those variations go legitimately? What do the cases on this topic say about the nature of the colony compared with its country of origin?”

The second set question relates to “Common Roots in British Colonial Legal History”. It is expressed in the following terms:

“Is there any pattern to similarities in the legal histories of Australasia and Canada (or India)?”

The third set question relates to “‘Mining Rights’ in Australian Legal History”. It is in the following terms:

“In the search for Australia’s national character are there any useful parallels, or contrasts to be made, between the rights and obligations of miners associated with the Eureka Stockade Rebellion of the 1850s and debates about the rights and obligations of miners in modern Australia?”

The fourth set question relates to “The Australian Parliament’s ‘Marriage Power’”. It is in the following terms:

“Does legal history have anything to teach us about whether, on a proper construction of the Australian Constitution, the national Parliament’s ‘Marriage Power’ should be interpreted as including a

power to enact legislation defining a marriage as including a same sex relationship?”

The Competition Guidelines include short “Background Notes” on each of the four set questions.

The deadline for submission of essays is 5.00pm on Monday, 10 December 2012.

The results of the Competition will be formally announced on Australia Day, 2013.

The Seventh Annual Competition (2013-2014)

The Seventh Annual Competition is in the planning stages. It is likely to be launched, in conjunction with announcement of results in the Sixth Competition, on Australia Day, 2013.

The Secretary would welcome feedback on the Competitions held to date and proposals for the forthcoming Competition(s).

THE OSGOODE SOCIETY

Membership of the Osgoode Society is open to all comers, as is membership of the Forbes Society. As is apparent from its website (www.osgoodesociety.ca), the publications and programme of the Osgoode Society are worthy of both emulation and engagement.

THE SELDEN SOCIETY

The Forbes Society continues to have a close, collaborative connection with the Selden Society. Like the Osgoode Society, it was an inspiration for establishment of the Forbes Society. Membership of the Selden Society too is encouraged.

The Australian Secretary of the Selden Society is Aladin Rahemtula, of the Supreme Court of Queensland Library. His contact details are as follows:

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NEWS AND EVENTS

ANZLHS Annual Conference, 10-12 December 2012

This year's annual Conference of the Australian and New Zealand Law and History Society is to be hosted by the Law School of the University of Technology, Sydney, between 10-12 December 2012 inclusive. The Conference Convenor is Associate Professor Shaunnagh Dorsett (shaunnagh.dorsett@uts.edu.au).

The Forbes Society, in conjunction with the NSW Bar Association, is a sponsor of the Conference's Keynote Address, to be delivered in the Association's Common Room on 10 December 2012, commencing at 5.45pm.

The Address will be delivered by Professor Philip Girard. He is the Professor of Law, History and Canadian Studies, and the University's Research Professor, at the Schulich School of Law, Dalhousie University, Canada. In 2013 he will take up a Chair at the University of Toronto. He has numerous publications, including *Lawyers and Legal Culture in British North America*. He is an active member of the Osgoode Society for Canadian Legal History, the Canadian equivalent of the Forbes Society. The title of his Address is "Colonisation, Culture, Continuity: The Role of Law".

The Address will be chaired by Justice PA (Paddy) Bergin, Chief Judge in Equity, of the Supreme Court of NSW.

The Chief Justice of NSW, Justice Bathurst, has kindly consented to allow the ANZLHS to hold a formal Reception for Conference Delegates in the Supreme Court's historic Alexander Dawson Room following Professor Girard's Address.

Conference of the Irish Legal History Society

The Irish Legal History Society is holding an "Irish Legal Diaspora Conference" in Dublin on 7-8 July 2013. The Conference will serve as part of that Society's 25th Anniversary celebrations.

The Conference Convenor is Dr Thomas Mohr of the School of Law, University College, Dublin. More details can be found on the website of the Irish Legal History Society (www.ilhs.eu).

The Conference has been planned as an additional attraction for prospective attendees at the British Legal History Conference.

British Legal History Conference

The 21st British Legal History Conference will be held at the University of Glasgow on 10-13 July 2013. The theme of the Conference is "Law and Authority". A draft programme and details of registration and accommodation will be available early in 2013.

The Conference email address is: BLHC2013@gla.ac.uk

Members' Publications

Andrew Tink's biography of Lord Sydney was published by Australian Scholarly Publishing Pty Limited in late 2011: *Lord Sydney: The Life and Times of Tommy Townshend* was officially launched at NSW Parliament House on 8 March 2012. It has won scholarly and popular acclaim. Macquarie University has since determined to confer on Andrew an Honorary Degree as a Doctor of Letters.

On Thursday, 29 November 2012, the Hon AM (Murray) Gleeson AC, QC, a former Chief Justice of the Supreme Court of NSW and Chief Justice of the High Court of Australia, will launch a new book by the Hon Keith Mason AC, QC, formerly President of the NSW Court of Appeal, in the Common Room of the NSW Bar Association. The book, published by Federation Press is entitled, *Lawyers Then and Now: An Australian Legal Miscellany*.

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Date: 19 November 2012

(JUSTICE) GEOFF LINDSAY

Secretary

CAROL WEBSTER S.C.

Treasurer/Assistant Secretary