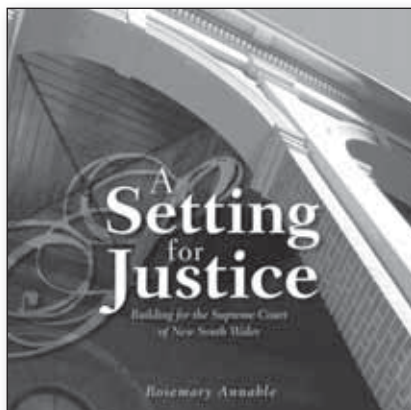


## A Setting for Justice: Building for the Supreme Court of New South Wales

Rosemary Annable, UNSW Press, 2007



In an 'Historical Sketch of S. James' Sydney Written for the Commemoration of the Hundredth Anniversary of the Laying of its Foundation Stone October, 1919', the unnamed author describes the Venerable Archdeacon Thomas Hobbes Scott as being 'of a somewhat exacting and overbearing disposition'.

The author goes on to mention the record of his quarrel with an (unnamed) parishioner. The latter was expelled from his pew, resented the expulsion, and re-entered it. The good archdeacon had the pew locked and nailed up, and boarded over. The expellee (or re-enterer?) climbed to the top – with his family – and was removed by the constables. The author adds that legal action was taken, with the re-enterer winning his case and receiving damages.

What was anonymous in 1919 is well-known to us now. The litigant was none other than Edward Smith Hall, described in 2004 by Mr John Pilger as the one journalist who 'did more than any individual to plant three basic liberties in his country: freedom of the press, representative government and trial by jury'.

For those who want to know more about Hall qua litigant at large, see the index to *Dowling's Select Cases*. For those who want to know more about Hall qua the impenitent parishioner, see Justice Keith Mason's 2005 Cable Lecture, 'Believers in Court: Sydney Anglicans going to Law'.

But as to the church itself, our anonymous pamphleteer records Governor Macquarie's report to Lord Bathurst in 1820:

'Some few months since I had a plan of a large and commodious courthouse made out, the foundation cornerstone of which was laid on October 7<sup>th</sup> last. Commissioner Bigge having, however, lately suggested and strongly recommended that instead of going on with a new courthouse it might be converted into a second church on a smaller scale than the large one already begun, I willingly adopted the commissioner's advice, and there is now a church erecting on the site of the originally intended courthouse...'

And, in fact, the governor's journal for 7 October 1819 records that 'At 2 p.m. the commissioner and the lieutenant-governor and the judges, with a great many other gentlemen, accompanied me to the site of the new courthouse...'

Given Macquarie's relationship with Bigge, I can only guess that the words 'lately suggested and strongly recommended' must have been infused with as much irony as a military man could muster. For this isn't the whole story. The anonymous pamphleteer of 1919 quotes from a paper by Andrew Houison, who I assume is the same Andrew Houison who was foundation president of the Royal Australian Historical Society:

While the commissioner was in Van Diemen's Land, Macquarie on the 20<sup>th</sup> March, 1820, laid the foundation stone of a school house for the education of the poor, to be called 'The Georgian School.' When the commissioner returned to Sydney he upset this project by converting it into a court house, the Supreme Court House. The foundation stone of this building contains a plate to the effect that it is a public school called 'The Georgian School.'

'Governor Macquarie was not to be balked by Commissioner Bigge over the dedication of the Georgian School House for a court house. He saw Thomas Rose, who held the block of land between King, Elizabeth and Castlereagh Streets, and almost to Market Street. In lieu of this – the present site of S. James' School – he received a farm at Appin (300 acres). Rose's hotel was called the 'Crown and Anchor,' and occupied the site of the present Metropolitan Hotel (since pulled down, and now the office of the

'Daily Telegraph') at the corner of King and Castlereagh Streets.

'When this building was completed it was not used for a school for some years. The court house, through a serious defect in construction, was not finished for some years, and the new school house was used as the court house, and after the court moved into the present Supreme Court building, the school house was spoken of for years as the Old Court House.'

Which, finally, brings me to Rosemary Annable's delightful tome, a book about that seriously defective building which is today as much part of our Supreme Court as ever.

*A Setting for Justice* is the history of the building – or, more correctly, buildings – which might have been knocked down but for the prescience of the then chief, Sir John Kerr. As is implicit in her work, were mere architectural and structural integrity the criteria for preservation, the structures ought not to have survived their first decade. Shades of other great Sydney buildings, its first and most well-known architect – in this case, Greenway – got the sack, budgets changed, and designs seem simply to have disappeared into the ether.

It seems to me a thing of excellent aptness that one of the architects, Standish Lawrence Harris, sued in the court house he worked on for fees incurred during his time as civil architect. (Dowling J allowed the suit, although others alleged a problem in that the plaintiff was said to have valued the works from which he received his percentage.)

Annable properly acknowledges Dr J M Bennett's 1974 *A History of the Supreme Court of New South Wales* as remaining 'the major authoritative published source' on the topic of the buildings. But she herself is no Jill-come-lately, being a past president of the Royal Australian Historical Society and the honorary archivist of St James. Moreover, as the book shows and as those who attended her 2006 Frances Forbes lecture on the topic will recall, she comfortably and lucidly moves across the various disciplines the work necessarily touches upon.

Those who want to know about the buildings should simply buy the book. However, I can't end the review without drawing attention to two things which I particularly enjoyed, two might-have-beens. The first is the reproduction of James Barnet's 1864 design for new courts on – and over – the Barracks site. Barnet, who built the GPO, was proposing a whopper, about 170m long, although a more modest 50m wide, and 20m high. The price tag was a bit much, so he had to be satisfied with his department clocking up 130 court houses during his tenure as colonial architect.

The second is the 1935 design, this time set to be 'the biggest single building in Australia', a mere 270m long, still 50m wide, but with an awesome 66m high tower which was to face Martin Place. The design is, well, clearly a design circa 1935. Had the then chief justice been a demagogue – instead of being, it is said, a man of a few well-frozen words – this would have been the type of place from which he could have declaimed to all.

Last year, Chief Justice Myron T Steele of Delaware addressed the Bar's common room. As I recall, the filing fees for corporations and other bits and pieces mean that the third branch of government in that fair state accounts for some extraordinary percentage of its revenue and can carry consequential muscle to budget time.

Annable's book is a reminder that the courts elsewhere can be much less lucky. That said, the lawyers and the laypeople of Sydney can be grateful that the executive branch through a number of officers in the Attorney General's Department has given its support to ensure that this strange edifice remains part of our legal heritage, including the arrangement of the production of this important book.

**Reviewed by David Ash**

## The High Court on the status of Justice Young

**Mr Pembroke:** We have said it is irrelevant and unnecessary. Maybe circular is adding more than is necessary. Your Honours, I would like to draw your attention to some features of the reasoning and conclusions of the chief judge in equity.

**Kirby J:** You keep calling him that, but he was not the chief judge in equity when he was sitting in the Court of Appeal. He was an acting judge of appeal.

**Mr Pembroke:** Yes. That is an interesting question, your Honour. He retains that title and he is described as such in the judgment.

**Kirby J:** Is that right? I thought he was AJA.

**Mr Pembroke:** No. I think it is one of those mysteries that - - -

**Gummow J:** No, it is not a mystery. There is a section in the Supreme Court Act, is there not, that gives, as it were - - -

**Heydon J:** He has an entitlement to sit in the Court of Appeal.

**Kirby J:** What is he called in the - this may be some battle of long ago. Yes, he calls himself CJ in Eq.

**Mr Pembroke:** He has a statutory entitlement to sit in the Court of Appeal by dint of that office.

**Kirby J:** That is true. Yes, he sat with me many, many moons ago.

**Gummow J:** And survived too.