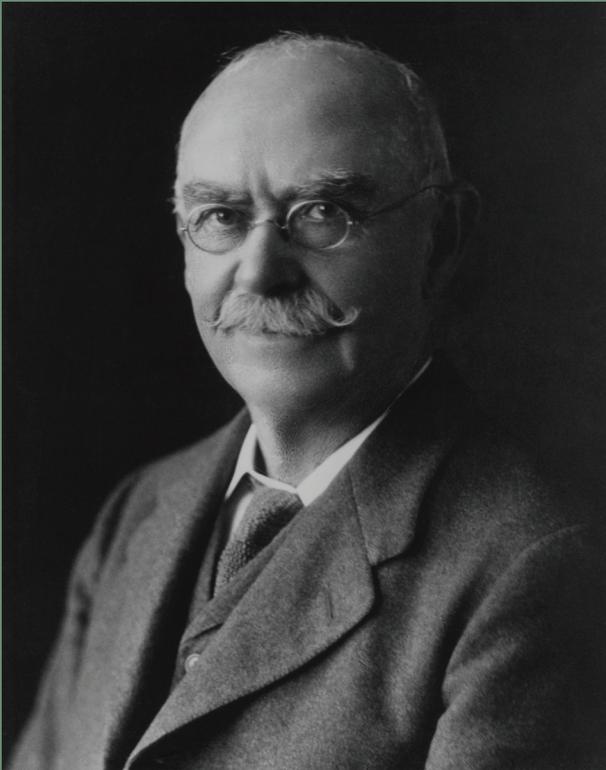


The Right Honourable Sir Frank Gavan Duffy KCMG, KC

(b. 29.2.1852 d. 29.7.1936) (Chief Justice from 1931-1935)



AUSTRALIAN
CONSTITUTION
CENTRE



*Duffy, by inclination a liberal but never active in politics, refused Senate nomination when it was offered to him. Among his outstanding qualities were his great kindness, as well as his extensive learning. He was said to have enjoyed hunting and to have been a crack shot in younger years. He was fluent in French and Italian. His poem 'A dream of fair judges', a parody of Tennyson's 'A dream of fair women' which he published, under the pseudonym 'Vie Manquée', in June 1892 in the *Summons*, the journal of the Melbourne Articled Law Clerks' Society, caused a considerable stir in legal circles and was remembered for many years.*

By H. A. Finlay

Duffy was born in Dublin in 1852 and arrived in Melbourne when he was four years old. His father was a member of the Victorian Parliament, and eventually Premier, who supported land reform and free trade.

As a teenager, Duffy was sent to England for school, but came back to Melbourne to attend

university. He obtained a BA, a MA and LLB and then worked as a clerk in the public service. In 1874 he was admitted to the bar and practiced in the County and Supreme Courts in Melbourne. He lectured at the University of Melbourne and authored a number of texts. He also founded two legal newspapers, the *Australian Law Times* and *Victorian Law Reports*.

He became a King's Counsel in 1901 and after Federation often appeared in constitutional cases in the High Court on behalf of the Commonwealth Government. He was widely regarded as a brilliant advocate. He appeared before the Court on no less than 53 occasions.

At the age of 61 Duffy was appointed to the bench of the High Court in 1913 after the death of Justice Richard O'Connor. This was almost immediately after the bench had been increased to a total of seven justices. The appointment of three new justices, tipped the balance of the Court, which began to interpret the Constitution in a new way. The two remaining original justices, Griffith and Barton, started to find themselves in a minority in Court decisions. The two original justices continued to interpret the Constitution on the preconceptions of the constitutional conventions that they had been a part of. As time went on Duffy began to reveal himself as a supporter of States' rights against the growing centralisation of power to the Commonwealth. This was in opposition to many of the newer justices, including as the lone dissenting judge in the famous *Engineer's* case.

Duffy was appointed Chief Justice in 1931, at the age of 78, when Isaac Isaacs was sworn in as Governor-General. A year later he was also appointed to the Privy Council. He retired from the High Court in 1935 at the age of 83 and died the following year. On his death, Justice Starke, on behalf of the Court, described him as "one of the oldest members of the legal profession in Australia" and that there were few who could "equal the length of his experience or who can rival it in variety of legal service", describing him as a "formidable legal gladiator".

Important constitutional cases the Chief Justice Gavan Duffy sat on:

1. In *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* ("Engineers case") [1920] HCA 54; 28 CLR 129, Gavan Duffy CJ stated (in dissent) that (at 174)

The fundamental conception of the Federation as set out in the Constitution is that the people of Australia, who had theretofore existed in several distinct communities under distinct polities, should thenceforward unite for certain specific purposes in one Federal Commonwealth, but for all other purposes should remain precisely as they had been before Federation.

(Principle: nationhood or federalism)

