

**THE  
TASMANIAN  
STATE REPORTS  
1961**

---

**EDITOR:**

**F. D. Cumbrae-Stewart,**  
*Barrister-at-Law.*

Reported by the Editor and other Members of the Bar.

---

**PUBLISHED IN HOBART BY  
THE LAW BOOK CO. OF AUSTRALASIA PTY. LTD.**  
**MELBOURNE** . . . . . 456 Little Collins Street.  
**SYDNEY** . . . . . 140 Phillip Street.  
**BRISBANE** . . . . . 30 Adelaide Street.

**THE JUDGES**  
**OF THE**  
**SUPREME COURT OF TASMANIA**

DURING THE PERIOD COMPRISED IN THIS VOLUME.

THE HON. SIR STANLEY CHARLES BURBURY,  
K.B.E.

Chief Justice.

THE HON. SIR RICHARD KENNETH GREEN, K.B.E.

THE HON. MARCUS GEORGE GIBSON.

THE HON. MALCOLM PETER CRISP.

THE HON. GEORGE HUNTER CRAWFORD.

THE HON. WILLIAM ELLIS COX, M.C.

---

*ATTORNEY-GENERAL.*

THE HON. ROY FREDERICK FAGAN.

*SOLICITOR-GENERAL*

DAVID MONTAGU CHAMBERS, Q.C.

## MEMORANDA

On 6th February, 1961, JOHN RICHARD MICHAEL DRISCOLL was appointed Acting Solicitor-General during the absence on leave of the Solicitor-General.

On 19th March, 1961, the Honourable Sir RICHARD KENNETH GREEN, K.B.E., senior puisne judge of the Court, died in Melbourne at the age of fifty-three years.

On 21st March, 1961, in the Full Court before the Chief Justice and GIBSON, CRISP and CRAWFORD J.J., in the presence of a large gathering of the Bar and of Solicitors, the Chief Justice said:

This is a sad day in the history of the Supreme Court of Tasmania. We sit to mourn the grievous loss at a tragically early age of our beloved brother judge, Sir *Kenneth Green*. We mourn because his fine contributions to the work of our Court are at an end—contributions that came from a judge who had attained wisdom, human understanding and a great breadth of culture. We shall miss immeasurably his wise counsels in our judicial work; but it is the loss of a brother judge whom each of us was privileged to count as a close personal friend that lies most heavily on our hearts today. His warm friendship, his rich sense of humour, his ready wit and his fine qualities of mind enriched us all.

To me one of his greatest judicial attributes was his deep humility before the law. He was never dogmatic; he always avoided too quick a conclusion. His final decision in a case came only after the most anxious consideration of all the possible points that could be made on each side—a consideration which often would extend far beyond the arguments submitted by counsel. He would dig deeply into all the case law and learned writings which bore on a case. But his humility was such that he never made a display of his deep scholarship. He was ever faithful to the traditional judicial process; he would, after wide reading and prolonged deliberation satisfy himself as to the principle of law applicable to the case and then state his ultimate conclusion clearly and concisely. A sentence or two in a judgment might be the result of many hours of reading and careful thought.

In the criminal jurisdiction he ever tempered justice with mercy. The duty of sentencing a convicted criminal was a burden which lay heavily upon him. He was always acutely conscious of the personal human tragedy involved in every case which came before him. He lived in no ivory tower remote from human affairs. In particular, in the

anxious and delicate task of determining the appropriate sentence to be imposed upon convicted persons he displayed great human qualities and a deep understanding of the affairs of men and women in all walks of life. In the case of youthful offenders he kept steadily before him the reformatory aspect of punishment as the dominant factor. As a result of his keen perception and understanding many a young man was turned away from the path of crime and became a useful member of society. He took it as a personal disappointment if a young man to whom he had given an opportunity to reform failed to take advantage of it.

For ten years Sir *Kenneth Green* was the senior puisne judge of our Court. For the last four and a half years of this period I have been Chief Justice and had the privilege of working with him closely in connection with both the judicial and administrative aspects of the work of the Court. This has been a great personal delight to me; it strengthened our deep friendship which began when he and I were undergraduates together at the University of Tasmania. We were the only two students of our year and we graduated together. No Chief Justice could have had a more loyal senior puisne judge than I have had in Sir *Kenneth*. From the moment of my appointment his loyalty to me in and out of court was unswerving—even if it involved compliance with a decision with which he personally disagreed. I valued most highly his opinion in judicial matters and his counsel in administrative matters, and I constantly sought his advice. More than once after taking into account his wise advice I have been led to change my own view.

He has gone from among us. But through his recorded judgments and through the cherished memory we will always have of him, his fine influence upon the work of our Court will continue for many years to come.

To his sorrowing family my brother judges and I extend our deep sympathy. We hope that they may find some consolation in what is said in tribute to him today on behalf of the judiciary and the profession.

*Fagan A.-G.* said:

The Bar joins with your Honours today in mourning the loss of *Green J.* through his untimely and early death. He held, in an all too short life, many offices of great distinction. He had a quality of mind and character, he had a sincerity and a graciousness and humility, to adorn all the offices he held. He did adorn them. He was to all of us, not only a great judge, not only one who had given great public service in his short life, but he was a close personal friend to nearly all of us. He had a great gift of

friendship. It was sincere; it was always available to all of us whom he knew. He was, as it were, most outgoing throughout the whole of his life—thoughtful, kind—taking the time—taking the trouble—to give comfort to anybody whom he thought needed it; to give advice; to give help and encouragement.

I suppose, in the ten years that he occupied the position of senior puisne judge in this Court, he must have sent time and time again, for young counsel to compliment them on their efforts; to encourage them; to give them the confidence and the strength so necessary and so important to one who starts the arduous work of counsel at the bar. There were many, many facets of his life, but when one begins to examine them, one finds that almost the whole of his life was devoted to public service of some kind or another. In any sphere or position, he rendered distinguished service. For some four years as a practitioner in Launceston, he had the admiration of the whole of that community and I well recall that upon his elevation to the bench, many, many people in Launceston said to me. "We are delighted to learn that he has been appointed to the bench, but we are very, very sorry to lose his services to the community," and the people would regret the loss of his services in whatever sphere he worked, because of that great humility, because of that quality of mind, and perhaps, above all, because of his readiness to reach towards people, to assist and to help with all the graciousness that he had by nature. He was often inclined to use the phrase that a man can fulfil himself. I think the one comfort that we can all get today is that he did fulfil himself and that, as he said on a similar sad occasion, only a few years ago, the loss is ours.

*R. C. Wright* said: This is an occasion on which I express the sorrow of the Southern Tasmanian Bar at the loss of a most distinguished judge—a judge who by his erudition was at the service of the law and who recognised his discipleship to the great master, whose name we count privileged to be mentioned on this occasion—and I mention it only because Sir *Kenneth* was a worthy disciple of the late *Andrew Inglis Clark J.*, whose attitude to the law he emulated and worthily achieved by a deep erudition, conscientious consideration to all cases and a humanity of judgment that was outstanding. He never regarded this institution with its great traditions an end in itself. He regarded it simply as an institution whose integrity should be maintained for dispensing justice to the litigants and that he regarded his duty both at this bar and on that bench—and that we all cherish.

If Your Honours please, I would like to mention one other facet that increases my high regard and the high regard of the bar for Sir *Kenneth*. It is a pity to be forgotten—he was one of the first of our profession to become aware of the imminence of the Second World War, and set a standard by his practical discharge of military duties that it was a privilege for others to follow. Poor health prevented him from going overseas and rendering active service, but that example did not go unnoticed by many of his brethren.

The only other thing I wish to mention is that not only the Bar as a whole, but especially the Junior Bar are indebted to Sir *Kenneth*. He took exceptional interest in giving them encouragement in the troublesome and anxious days—more especially helped in one's early years at the bar. And it was his privilege in life as he regarded it to accord a friendly attitude to these young men, and they are too numerous to count—men at the bar in their early years who regard themselves as greatly in his debt for that especial interest. He has set a standard, and although he has passed on that standard will endure as does the standard of his great master, the late *Clark J.* It will endure as a guide which, if we all follow, this institution will merit its position as a servant of the law.

We lament the passing of the late Sir *Kenneth Green*.

*J. B. Piggott* (President of the Southern Law Society) said: On behalf of all legal practitioners in Southern Tasmania, I wish to adopt the remarks which have been made by those who have spoken before me, and I think I may state feelingly on behalf of all lawyers, whether barristers or solicitors, that we feel here today a very deep sorrow in the sense that His Honour the Chief Justice has expressed it, that we feel we have lost a sincere friend. As often, on such a formal occasion, when a man achieves the very highest offices which are available to men of our profession, a man achieving those offices sometimes finds he is separated by virtue of his position, from the companionship of his fellowmen. That is something that the late Sir *Kenneth Green* assiduously worked to avoid. We can remember that not only in our Conventions, in our legal gatherings, but also in the field of sport, Sir *Kenneth Green* encouraged and enriched the associations with his brothers who have been with him in the legal profession, and from the youngest articled clerk to the most senior practitioner, we feel that he was a friend whose guidance and help was available on all occasions.

He was a kindly, sober man with a great contribution to court learning; a serious scholar; a painstaking and a

hard-working judge. But we remember perhaps more today the courtesy and the kindness with which he administered his role in the courts. I can remember—if I may speak of one personal matter—that shortly after the War, he had been elevated to the bench. There was a great deal of frustration and irritation because of the back log of cases. I remember his courtesy and his kindness to witnesses and to barristers at that particular time, which was a very difficult one for the Bench and for the Bar.

We today, on behalf of the Society, stress our sympathy to his relatives and to his brother judges. We mourn his death but we are very proud that he was a member of our profession and we feel that his life and spirit will remain to inspire us to better things.

*J. L. Barton* (President of the Northern Law Society) said: On behalf of members of the Northern Law Society, I would like to add a tribute to the late Sir *Kenneth Green*. In Launceston we had the privilege and pleasure of practising with Sir *Kenneth* during the great deal of his professional life. He was a popular and respected barrister and with his outstanding ability, he set up an extensive practice. However, in spite of this, he took an active part in the affairs of the profession. He was a member of the council of the Society for many years and during that time, his experience and knowledge were a great help to all members of the profession.

In addition to his interest in the affairs of the profession, he also took great interest in outside organisations and in particular, I would like to mention his interest in all clubs and associations that were concerned with the welfare of youth in the community. We will all remember his fine work in this field. Sir *Kenneth* was elevated to the bench and your Honour and previous speakers have referred to his value and worth when in that high position. He was a friend to all practitioners. His ability, his friendliness, his bright and cheerful personality, will be missed by all, and particularly by those younger members of the Bar in whom he was so interested. By his passing, the legal profession has lost one of its outstanding members. We express our sympathy to members of the family and to his brother judges.

On 28th March, 1961, WILLIAM ELLIS COX, M.C., was appointed a judge of the court in the place of the late Sir KENNETH GREEN, K.B.E.

On 7th August, 1961, the Solicitor-General resumed his duties.