

THE  
TASMANIAN  
STATE REPORTS  
1971

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PUBLISHED IN HOBART BY  
THE LAW BOOK COMPANY LIMITED

MELBOURNE	339-393 Lonsdale Street
SYDNEY	301-305 Kent Street
BRISBANE . . . .	27-35 Turbot Street
PERTH	6 Sherwood Court

ISSN 0085 - 7106

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Wholly set up and printed in Australia by  
Mercury-Walch, 5-7 Bowen Road, Moonah, Tasmania 7009

**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 MALCOLM PETER CRISP, Kt.

THE HON. GEORGE HUNTER CRAWFORD, Kt.

THE HON. FRANCIS MERVYN NEASEY.

THE HON. DAVID MONTAGU CHAMBERS.

THE HON. ROBERT RICHARD NETTLEFOLD.

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*ATTORNEY-GENERAL*

THE HON. MAX EARDLEY BINGHAM

*SOLICITOR-GENERAL*

ROGER CHRISTIE JENNINGS, Q.C.

CORRIGENDA

[1970] Tas. S.R.

- p. 121 Counsel for the defendant should read “*J. McI. Young, Q.C. and D. M. Bennett*”.

[1974] Tas. S.R.

- p. viii Reference to *Manning v. Foster*, [1971] Tas. S.R. (N.C.) 19.
- p. 52 Headnote, *Manning v. Foster*, [1971] Tas. S.R. (N.C.) 19.
- p. 55 Footnote (6), [1971] Tas. S.R. (N.C. 19).
- p. 61 Footnote (12), [1971] Tas. S.R. (N.C.) 19.
- p. 65 Headnote, par. (c). For “Neasey” substitute “Crawford”.

[1975] Tas. S.R.

- p. iii Attorney-General. For “THE HON. BRYAN KEITH MILLER” substitute “THE HON. BRIAN KIRKWALL MILLER”.
- p. viii Reference to *Comalco Aluminium (Bell Bay) Pty. Ltd. v. Claudio*, [1970] Tas. S.R. 231.  
Reference to *Electrolytic Zinc Co. of Australasia Ltd. v. Emmerton*, [1971] Tas. S.R. (N.C.) 23.
- p. 10 Footnote (1), [1971] Tas. S.R. (N.C.) 23.
- p. 15 Footnote (10), [1971] Tas. S.R. (N.C.) 23.
- p. 16 Footnote (22), [1971] Tas. S.R. (N.C.) 23.

[1976] Tas. S.R.

- p. iii Attorney-General. For “THE HON. BRYAN KEITH MILLER” substitute “THE HON. BRIAN KIRKWALL MILLER”.
- p. 68 Footnote (5), [1971] Tas. S.R. 99.
- p. 80 Footnote (22), [1971] Tas. S.R. 99.
- p. 111 Footnote (8), [1971] Tas. S.R. 57.
- p. 114 Footnote (7), [1976] Tas. S.R. 40.
- p. 146 Footnote (3), [1971] Tas. S.R. 299.

## MEMORANDA

On 26th February, 1971, at a special sitting of the Supreme Court BURBURY C.J. said: Mr. Attorney, Mr. Solicitor, Members of the Bar, Sir Marcus\*.

We sit here today to bid farewell and pay tribute to the senior puisne judge of this Court upon the occasion of his too-early retirement.

We are sad that this magnificent contribution to the administration of justice and to the development of the law in this State has prematurely come to an end. But we rejoice that he has been able to carry on his judicial work with remarkable vigour and great distinction for a period as long as eighteen years. It is a matter of very great satisfaction to me, both officially and personally, to have the privilege of expressing publicly what I know to be true about Sir Peter's judicial accomplishments. I do so in the sure and certain knowledge that my judgment in this matter will not be reversed or varied by the High Court of Australia but will unanimously and enthusiastically be affirmed.

I say without doubt and without exaggeration that among the twenty-six judges who have sat on this Bench since its establishment in 1824 — and I include in the twenty-six the Chief Justices — Sir Peter is one of the most distinguished. He has had few equals and no superiors. His judgments along with those of Andrew Inglis Clark, father and son, will go down in legal history as outstanding examples of incisive, clear, imaginative and original legal reasoning, but at all times firmly based on the fundamental postulates that law is an instrument of justice and that "the letter killeth but the spirit giveth life". His judicial reputation extends throughout Australia, as I well know from talks with many Australian judges. His work has added lustre to our Court. It is not an over-estimate to describe him as a great Australian judge. His Honour brought to his judicial work a great breadth of learning, not only in the law itself but in other fields such as medicine and science. He particularly delighted in a case involving an understanding of what goes on in another man's workshop. There was many an occasion in this Court when he astounded an expert witness by his intimate and accurate knowledge of the expert's own discipline. But with all this, he has always been humble before the law without holding dogmatically to his opinions. I have found him to have a rare facility to listen and understand other points of view and a rare capacity to revise an opinion first formed after hearing other views. Like Spenser's scholar it may be said of him "Gladly would he learne and gladly teche".

\*Formerly Gibson J.

His Honour has shown himself a master of all branches of the law, but I venture to say that his most notable contributions have been in the fields of criminal law and administrative law. During his period on the Bench this Court has been faced with difficult and fundamental problems of criminal responsibility arising under the Tasmanian *Criminal Code*. As a member of the Court of Criminal Appeal in such cases as *Reg. v. Vallance*(1), *Haas v. The Queen*(2), and *Hitchens v. The Queen*(3) (to mention but a few), he has played a major part in what I believe to be the sound development of the law under the *Code*. He has never approached the problems of interpretation arising under the *Code* as an exercise in semantics but has shown an unerring judicial instinct for what lies beneath the surface of the words and for an interpretation which best serves the purposes of the criminal law and the interests of justice. In this and other fields of law he has steadily upheld the principle that the law, even as embodied in a code, should be a flexible, dynamic instrument of justice which must be moulded to changing conditions of society and must be made to work. He has had little time for ancient shibboleths. Like Lord Wright when “ghosts of the past have stood in the path of justice clanking their medieval chains” he has “passed through them undeterred”.

In the field of administrative law I would particularly refer to his recent and most valuable judgment in the *Municipal Commission Case*(4) — a judgment which is a splendid example of the judicial process at its best, involving a critical and penetrating analysis of the maze of case law leading to an exposition of principle properly applicable to modern conditions. In that judgment in point of fact Sir Peter anticipated the House of Lords in extending the boundaries within which the courts will interfere in administrative action affecting individual rights — although in the meantime the High Court had taken a narrower view.

There are many very quotable quotes in Sir Peter’s judgments; they will be quoted as long as the Tasmanian law reports are read. I select one today which although referring specifically to the task of a judge in passing sentence is indicative of a wider legal philosophy of the role of a judge. And if I may say so its style is characteristic and unmistakable. It is from his judgment in *Wise v. The Queen*(5) where his Honour said:

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(1) [1960] Tas. S.R. 51

(2) [1964] Tas. S.R. 1.

(3) [1962] Tas. S.R. 35.

(4) *St. Leonard’s Municipality v.*

*Brettingham-Moore*, [1968]

Tas. S.R. 155, [1970] Tas.

S.R. 191.

(5) [1965] Tas. S.R. 196, at p. 200.

“Sentencing is an art and not a science. By that I mean that if in any given case it were possible to arrive at the exact measure of the punishment to be awarded by the application of logical rules which proceeded with mathematical inevitability to a determinate conclusion, then indeed the judge’s responsibility would be a different one from that which we know.”

I would now speak briefly of Sir Peter as a valued colleague. I know I speak for all my brother judges and for Sir Marcus Gibson (who is happily with us to-day), when I say that he has at all times been a most congenial and a most stimulating colleague. Every one of us from time to time has sought him out to discuss some point which has been troubling us, and he has never failed to throw fresh light on it from the resources of his original and lively mind and the depth of his knowledge. We shall all very greatly miss his wise counsel.

On a more personal note, I want to express my appreciation of Sir Peter’s life-long friendship and his unswerving loyalty to me since I have been Chief Justice of this Court. Our association goes back to University undergraduate days when we made our first tottering steps in the path of the law by holding briefs in the University Debating Team together. Our friendship will continue, but I shall sadly miss him as a judicial colleague. But I with others concerned in the administration of the law take comfort in the thought that we will continue to draw on his wisdom as perpetually enshrined in the pages of the Tasmanian law reports. We wish him a long and happy retirement and hope that he will find satisfaction in the important community work which he is continuing to undertake.

E. M. BINGHAM, A.-G., said: May it please the Court: We are met, as your Honour has said, on a memorable occasion. Your Honours will recognize the lines from Adolphus “Thoughts much too deep for tears pervade the Court when I *assumpsit* bring and god-like waive the tort”. I think it not strictly accurate to say that perhaps our thoughts are too deep for tears, nor of course am I engaged in bringing *assumpsit*, but the occasion is certainly one which engenders mixed feelings.

I would ask the indulgence of the Court in addressing the body of my remarks to his Honour Mr. Justice Crisp:

At the forefront, Sir, of the feelings which we have on this occasion is naturally the feeling of sadness in the loss which the Bench, the Bar and the whole legal profession in Tasmania are today suffering by your Honour’s retirement. But I know that your Honour would not wish the pervading sentiment to be either morbid or lachrymose. I propose therefore to emphasize the other aspects of the occasion. I would wish to point out that

it is a source of some alleviation to us to know that your Honour's talents will remain available in the community and a further pleasure to have this opportunity of saying in public the sort of thing which one would not normally say even in private. If your Honour finds the experience somewhat embarrassing, as indeed I feel may be the case, some consolation may be afforded by the thought that this is probably the 1971 equivalent of having a statue erected in your Honour's lifetime!

In addressing your Honour now I admit to some pride in being able to do so as official leader of the Bar. But I would think it proper to advert as well to the personal pleasure which the occasion gives me. It is a fact that it has been my good fortune to be in more or less continuous contact with your Honour over the whole of my life in the law. I recall as a somewhat rusty C.R.T.S. student in your Property Law class being made aware of the weakness of my Latin! — while being initiated most ably and as painlessly as possible into the intricacies of contingent remainders and other such notions. As a junior barrister it was frequently apparent to me that the point of vantage provided by the extra altitude of the Bench above the Bar Table enabled your Honour almost invariably to have a much clearer view of the proceedings than did the participants! As an advocate before your Honour in the appellate jurisdiction of the Court, it was my experience to be made aware that even when my contention was correct it was probably for the wrong reasons! As a reporter, and for a very brief period, Editor, of the Tasmanian State Reports, I have had the benefit afforded by close study of your Honour's reasons for judgment. And as a Magistrate I was reminded of a comment that Lord Justice Asquith made about the British Court of Appeal. He said "One's colleagues are such nice and accomplished men that it is almost a pleasure to be dissented from by them."

Your Honour, I am sure I speak for all my magisterial former colleagues when I say it was almost a pleasure to be reversed by yourself on appeal!

It is in the light of that relationship, your Honour, that I assert my qualification to speak today.

The biographical details of your Honour's career need no repetition. Having been born into a family already well established in the law, your Honour pursued a distinguished career in the legal service of the Crown, broken by a period of equally distinguished military service; and culminating in appointment as Solicitor-General in 1951 and as a judge in 1952.

It is necessary to speak of your personal attributes. Your Honour is well-known for the keenness and breadth of your



intellect, for your felicitous prose style which is distinctive, clear and precise. The Bar has seen many examples of your understanding of the lot of other human beings, witnesses, litigants, even offenders. And this understanding, is no doubt fortified by the width of your Honour's experience and interest not only in the law but also in sailing and fishing — both of which pursuits I think are conducive to a certain humility in a man.

Your Honour's scholarship is widely recognized, and among your published works are an E. W. Turner Lecture given in 1965, a booklet on the History and Status of the Legal Profession, and also, I believe, a short but delightful anonymous article on Angling in Tasmania, which is not without the characteristic trademark of your Honour's personality, the skill in balancing competing considerations of various kinds. I take the liberty of referring to a passage which conveys a message, "not meant to discourage the tiro but to induce in him a proper pessimism" — a state of mind which all of us recognize as being equally necessary for beginning a career at the Bar.

It is not necessary for me to speak of your Honour's judicial work. Mostly it speaks for itself in the pages of the Tasmanian State Reports and the collected judgments of this Court. But I would wish to refer to your Honour's skill in summing-up and directing juries in criminal cases, a skill in translating law and evidence into comprehensible everyday English for the benefit of the jurors. A major enterprise of a quasi-judicial nature which engaged your Honour's attention was probably the Fluoride Royal Commission. Public comment has already been made about this magnum opus, and I wish only to remark that this Report will no doubt be regarded as definitive for many years to come.

The community has benefited richly from your extra-judicial activities, as a member of the University Council, Chairman of the State Library Board, and since 1960 as a member of the National Library Council. You have also on occasions in public lectures and speeches, endeavoured to establish and affirm the strength of professional obligations and professional duties. You have made it plain that the profession can expect no status without performance, and your awareness of human needs in the reform of the law has been amply demonstrated.

May I conclude, your Honour, by saying that we regard ourselves as fortunate to have had your services as a lawyer and a judge in this State. We are fortunate to have enjoyed and to continue to enjoy your acquaintance. We are grateful for all you have done for the law and the community in Tasmania, and we anticipate many further contributions in this direction. No doubt, to modify some words of your Honour's in *Beard v. Director of*

*Housing*(6) those delicate emotions that are popularly regarded as being strengthened by absence will also be nurtured by your Honour's continued propinquity.

I know it would be your Honour's wish that we should not forget on this occasion your Honour's personal staff and we are all grateful for the loyal service they have given you, and glad that we shall continue to enjoy the presence of your Associate, Mr. Hickman, and your Attendant, Mr. Sims, in the service of your successor.

Your Honour, we all wish you and Lady Crisp a long and happy period of retirement.

P. B. WALKER (President of the Tasmanian Law Society) said: May it please the Court: I speak for the Law Society of Tasmania which represents every legal practitioner in this State. On its behalf, I would like to say to your Honour, Sir Peter Crisp: Thank you for the service you have so willingly and faithfully rendered to the law, to the legal profession, and to the citizens of this State, during your eighteen years as a judge of the Supreme Court of Tasmania. May I also express the hope that, in your retirement, your Honour will enjoy good health and have the opportunity to engage in those personal pleasures which the demands of judicial office have restricted.

When your Honour first took your place on the Supreme Court Bench, in March, 1952, you used a quotation from Bacon that "Judges ought to be more learned than witty, more reverent than plausible and more advised than confident". May the casting off of the fetters of judicial office now enable your Honour to express yourself with the wit, plausibility, and confidence, which we know that you possess. I hope that, in between the enjoyment of the pleasures of angling and cruising round our beautiful shores, your Honour may find the opportunity to follow your very fine monograph on the "History and Status of the Legal Profession" with a history of the Tasmanian legal profession.

Your Honour, on behalf of every practitioner in this State, I thank you, and wish you good health, and a personally satisfying retirement.

C. R. WRIGHT (Vice-president of the Tasmanian Bar Association) said: If the Court pleases: Your Honour, Sir Peter Crisp, I speak to you on this memorable occasion with mixed feelings of pleasure and regret. My pleasure lies in the fact that I have the opportunity of addressing you on behalf of the Tasmanian Bar Association with which Society you have long

(6) [1961] Tas. S.R. 141. The words referred to do not

appear in the report, in which the reasons for judgment were abbreviated.

and happy associations: I regret, and it is the regret that is felt by all here present, that after a long period upon the Bench when your career is still at its height it should have become necessary for you, by reason of ill-health, to retire. Your Honour, we are aware that the ill-health that has now overtaken you is not a matter of recent origin; we are aware that it is a burden under which you have suffered for many years past. We also feel that it has been contributed to in no small measure by the anxiety that your Honour has always demonstrated that you should discharge your judicial office with propriety and in an exemplary manner on all occasions.

Your Honour, we feel that this anxiety to discharge your office has recently been exemplified, even after sickness overtook you, when you went to the trouble for the benefit of a litigant who had appeared before you, to deliver a judgment whilst you were still in hospital. That, we feel, typifies the dedication you have had to your duties as a judge of this Court. It is also felt, Sir, that you have possessed a rare combination of talents in a judicial officer. You have been, Sir, a brilliant academic lawyer, your judgments are revered throughout the Commonwealth as being authoritative, concise and to the point. But perhaps more importantly you have been a judge who has always viewed justice in the broad sense and has had the rare ability to cut through technicalities and tactics where they appeared as impediments and to get to the truth of the matter under consideration. I have never known, Sir, in the period that I have been at the Bar, any witness or litigant to complain that your Honour had unjustly found that he was a man not to be believed.

We hope, your Honour, that your retirement will enable you to regain the health that you have lost. We hope that your associations with the law will continue and I have the greatest pleasure in wishing you well in your retirement.

CRISP J. said: Mr. Chief Justice, Mr. Attorney, Mr. Walker, Mr. Wright, Members of the Legal Profession, Ladies and Gentlemen:

It would require a stonier heart than I actually do possess not to be moved by some of the things that have been said today. You have all been very kind, and although much as one might like to be equated with people like the late Mr. Justice Clark and his distinguished father, I think the truer verdict in the face of such men would be that dictated by humility. I am also flattered in one way at the number of tasks which have been suggested to me for my retirement! I am sure that shows a consideration for my future welfare which I should appreciate — although at the moment perhaps my thanks or my gratitude is not equal to the enthusiasm with which these suggestions have been advanced.

Mr. Attorney, you remind me, of this Court by an odd quirk of the imagination, when you speak of a "statue in one's lifetime". It takes me back to the many years that I have practised in this Court — the only Court that I know of which has a statue in it — not of a judge — not even of a barrister, but of one who was a conveyancing solicitor. And in this, this Court I think is somewhat unique. And when I look at that noble brow of Robert Pitcairn, I am always reminded that the late Sir Harold Crisp used to tell me the admiration which was felt for him by the members of the profession and the public in this State, and how he personally always derived some comfort as well as aesthetic satisfaction from that particular statue — because the epitaph that was published upon him was, "He was an Honest Lawyer". He always added, "I see no reason for the distinctive epithet".

I have always felt that I belonged in this Court, and it is with considerable feelings of emotion that I come to this the last time when my voice will be heard within its walls. There has been a Crisp in this Court since 1846. There has been one at least practically continuously. There was a Crisp present on the occasion when that statue was unveiled. On many other occasions there have been more than one. It to me now seems somewhat odd that as far as the South of this State is concerned I am the only one left in active practice. And today this shall cease — although, happily, I understand that this is a matter which will soon be remedied. I hope it will. And I hope that the name which I have borne and which others have borne before me will for long be associated with the work of this Court and the administration of the law in Tasmania.

I suppose there are a few other things that you might permit me to say. It is true that I am retiring before my statutory course has been fully run. But I do so not because I want to in the sense that without the physical compulsion that I at present feel I would have abandoned the Bench for a life of ease. For in fact, I do feel this physical compulsion of which I have spoken. The office which up to now I have had the good fortune to occupy is one that I esteem. I know of no way in its conscientious performance in which one can relax, ease off, take it easy or whatever other phrase you choose to employ as an invitation to use something less than the most intense effort, physical and mental, of which one is capable. I am unwilling to coast for the remainder of the eleven years in which I could have occupied this office had I let the Statute take its course. So despite the consideration shown to me by my colleagues — and you yourself, Mr. Attorney — I am satisfied there is no honourable alternative. For now that the tide of life has turned against me, there is no honour to be gained in seeking to stem its ebb

at the expense of those who come to this Court for justice and who have the right to expect the fullest and most intense effort in its pursuit of which man is capable.

And let me on this last occasion, in the same vein, correct a view sometimes expressed by laymen — and even some lawyers. I know of no branch of the law as a profession the conscientious practice of which does not involve tension, worry and effort. Least of all the Bench. It is not a sinecure, or, as sometimes imagined, a vantage point from which one watches with tolerant detachment the stream of litigants and witnesses go by secure in the confidence that counsel will do all the work and that it is just a matter of the intuition born of experience pointing to the right conclusion. I have never found it so. Did I but know how to pray, there have been many moments in the past when I could have prayed that this agony of decision, this torment of doubt, could pass from me. For there are no absolutes, no certainties in the law or in evidence: we are but novices in our study of human behaviour and in our understanding of the mental and physical processes that condition the spoken recollection of partially observed events. We know too much of the shortcomings and too little of the remedies to be comfortable in our social roles as judges, and any man who thinks he can retire to the Bench for a life of ease is in danger of both deluding himself and betraying his trust.

It is true perhaps that the major part of my professional life, excluding war service, has been spent on this Bench. It is also true that in sum my professional life has been shorter than most. This in itself is hardly a matter of any significance. But I may be permitted a few glances in retrospect, if you will bear with me. For even in my so short time there have been some changes.

When I entered the law — as a schoolboy practically, at the age of sixteen — in the matter of legal training, a heavy emphasis was still placed on tutelage by a senior practitioner. And so long as there was a conscientious performance of that duty it had much to commend it. And in this let me at this juncture remember and acknowledge my own very great debt to those who taught me in this fashion, two of whom are still with us — although not today unfortunately. I refer to Alan Crisp and to Reg Wright, than whom no pupil had better mentors. I owe them an enormous debt, both of them. I make no distinction. One complemented the other, and I am intensely grateful to them both. And to others, like P. L. Griffiths, and even Andrew Clark who at times took an interest in me and helped me along my way. And this method of tutelage let me remind you — this was the traditional method of the common law in training its practitioners in good measure due to the fact of the

late reception by the Universities of the common law as a learned discipline.

But now the emphasis has changed. Full-time academic instruction is now the basic method for the training of the fledgling practitioner. And those who think the pendulum has swung too far look to redress the balance by courses which are designed to intensify the instructional content of a supplementary period of Articles.

I quarrel with none of this. Indeed I think I can say that in the past I have helped to hasten its progress. But if it be right that lawyers should learn to be academics, the corollary should also hold that academics should learn to be lawyers. And I look forward to the day when no-one shall be allowed to teach the law unless he shall have first rounded off his academic qualifications by some period spent in the practice of that which he professes to teach. I know there have been many exceptions, but the position to which I have adverted is too frequent, to my mind, for the good of the law. In this way those to whom I refer may learn to distinguish between dissent and disobedience, between teaching and preaching. I have said so before, on another occasion, but I seek your leave to repeat: I challenge the brief — and I use those words in their full technical significance which only perhaps a practising lawyer would understand — of anyone who professes the law and yet teaches or preaches disobedience to it. Such persons do not belong within the community of lawyers, either in name or in aspiration.

Let me tell you a story which is perhaps not very interesting — but it is to me. Years ago as a schoolboy I read a story in Herodotus (and I assure you I read it with the greatest difficulty and with the aid of a student cog — I make no pretensions to learning). He told it of the Spartans. Aeschylus, I believe, tells the same story of the Athenians, so you can relate it either to Salamis or Thermopylae, whichever you wish. I understood it ill when I first read it, but years later I read it again in one of those Essays of Sir Gilbert Murray, than whom nobody in modern times is better able to illuminate the essential nature of those democratic freedoms which are our legacy from Ancient Greece.

It concerned the Persian King Xerxes who with his enormous hosts of warriors and ships was preparing to invade Greek Attica, and who could not understand why the Greeks, though free men, refused, in the face of his myriads, to capitulate and continued to defy him. And on this point he questioned one Demarâtus who was a Spartan captive, but whose advice he had come to trust. He asked Demarâtus, having learnt the small number of his Greek adversaries, "How can they possibly

stand against us, especially when as you have told me they are all free and there is no one to compel them?" And the Spartan Demarätus answered: "Free they are, O King, yet not free to do everything, for there is a Master over them, even law, whom they fear more than thy Servants fear thee. At least they obey whatever he commands. And his Voice is always the same".

"And his Voice is always the same". Freedom and equality under the law are still valid concepts. Not as absolute statements of right, for such would be to equate them with licence, but as ideals qualified in their practical expression by corresponding duties and obligations. It is this qualification, this price, this debt — which lawyers call a duty — that is so often overlooked in the debates on these matters taking place today. In fact I have often thought that those who frame a Charter of Rights without a corresponding Charter of Duties, who talk of fundamental or human rights without concerning themselves with duties equally fundamental, do themselves and society a disservice. There *are* human rights, I believe, — individual rights — but there are also duties due to the society which confers and protects those rights, and it is this balance, this relationship between them which is fixed and maintained by the rule of law. That is my Creed, and this is the Creed with which I leave the Bench.

Not that this relationship is constant in its content in all ages, in all circumstances. But a fixed concept with changing content is not a stranger to the democratic processes of the law at all. For though the law must be certain it cannot stand still, as Pound reminds us. It must always possess within itself its own potential for change, but it is of the essence of the rule of law — not of laws but of law — in a democratic society that this potential is capable of being, and should be exercised in an orderly organized manner without violence or usurpation of authority.

But, let me add on the other side, equally do they err, those who, frightened perhaps by the excesses of some present-day radicals, who would deny this right to initiate this process of change — even to hasten it if needs be — who would deny or imperil it by repression and over-reaction. Both are wrong. And both are equally dangerous.

This seems to me in some measure to reflect the present position of the society in which we find ourselves. There is abroad a spirit of impatience, of challenge, of dissent, which in some instances has passed to disobedience. If we but studied our history we would know that no matter how difficult these things may appear to the myopic view of those who concern themselves only with the present, there are always parallels to be gained from the past. But I have not the time to develop

them at length. But as I have said on another occasion, if we forget those lessons we enhance our chances of repeating the mistakes that they gave rise to. The expression which I have used before and which I believe to be true is that "Those who forget the past are bound to repeat it".

In the problems that lie ahead — and I refuse to indulge in any hyperbolic clichés about "troubled times" and "perilous seas", and things of that kind — the legal profession as a whole, Bench and Bar and all its practitioners, cannot escape its social, its community responsibility for providing in large measure guidance in the form of wisdom, tolerance and understanding that will enable society to evolve as it should, broad-based on a rule of law while respecting and preserving those elusive principles which collectively we call freedom.

I am confident that in this small State there is both the ability and the wisdom in the members of the profession now gathered in this Court to enable this duty to be discharged. I am confident that I leave the Bench in good hands; that the Bar to which any Bench owes its strength, is capable of maintaining its proud traditions of disciplined independence. I know also that I leave the Bench irredeemably in the debt of the profession to which I and many of my forbears have been proud to belong. It is in expression of that pride, and not in contemplation of my own puny efforts, that I choose to end these my last remarks in this Court with those same words of Holmes with which I ended those Lectures to which Mr. Attorney has referred, in the hope that you, as I hoped the students would, find in them the same inspiration that I did. May I quote:

"For Law is the calling of thinkers and a man may live greatly in the law as well as elsewhere: that there as well as elsewhere his thought may find its unity in an infinite perspective: that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable!"

And now the time has come. I thank you all sincerely and without reservation — my brother judges for their patience, their co-operation, their trust, and their help at all times freely vouchsafed; my personal staff to whom, Mr. Attorney, you so kindly referred, for their unfailing help, their tolerance of my foibles, and, above all, for their unswerving loyalty in all things both great and small — than which there is no greater gift they could have bestowed upon me. And lastly, fellow practitioners all for your fellowship over the years, for your trust, and above all for that comradeship, that sense, that in the face of trial and difficulty you do not stand alone but with flanks sustained, encouraged — abetted, if you will — by the close society of



others who will not fail to render any assistance that may be sought from them.

By your leave, Mr. Chief Justice, I will now adjourn.

On 1st March, 1971, the Honourable Sir MALCOLM PETER CRISP, Kt., resigned his office as a judge of the Supreme Court.

On 2nd March, 1971, ROBERT RICHARD NETTLEFOLD was appointed a judge of the Supreme Court in the place of the Honourable Sir MALCOLM PETER CRISP, Kt.

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