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THE JUDGES
OF THE
SUPREME COURT OF TASMANIA
DURING THE PERIOD COMPRISED IN THIS VOLUME

THE HON. GUY STEPHEN MONTAGUE GREEN,
Chief Justice.

THE HON. SIR GEORGE HUNTER CRAWFORD, Kt.

THE HON. FRANCIS MERVYN NEASEY.

THE HON. DAVID MONTAGU CHAMBERS.

THE HON. ROBERT RICHARD NETTLEFOLD.

THE HON. HENRY EDWARD COSGROVE.

THE HON. MERVYN GEORGE EVERETT.

ATTORNEY-GENERAL

THE HON. BRIAN KIRKWALL MILLER

SOLICITOR-GENERAL

ROGER CHRISTIE JENNINGS, Q.C.

MEMORANDA

On 26th September, 1978, the Honourable DAVID MONTAGU CHAMBERS, a judge of the Supreme Court, died at Hobart aged sixty-one years.

On 29th September, 1978, at a special sitting of the Full Court before the full bench, in the presence of a large gathering of the Bar and of Solicitors, GREEN C.J. said:

We are sitting today to express our sorrow at the death of our brother judge, Chambers J., and to pay tribute to him.

Just two months ago, accompanied by Mrs. Chambers, Chambers J. travelled overseas on sabbatical leave. A few weeks after arriving in England he became seriously ill and returned home. On Tuesday last, 26th September, 1978, he died.

Chambers J. was born in Hobart in 1916, the son of a practitioner of this Court, Mr. V. I. Chambers. He was educated at the Hutchins School and after a distinguished course of study he graduated from the University of Tasmania and was admitted to the Bar in August 1939. Thereafter in many different capacities he gave nearly forty years' devoted service to the law.

He was a Crown prosecutor from 1946 until 1951 when he was appointed to the office of Crown Solicitor. Whilst he was Crown Solicitor he also lectured in criminal law in the Faculty of Law at the University of Tasmania. I and many others who were his students, some of whom are in this Court today, count ourselves very fortunate indeed at having had such a patient and learned teacher.

In 1956 Chambers J. was appointed Solicitor-General and took silk. As Solicitor-General he represented the Crown and the State of Tasmania in a great many important cases both at first instance and on appeal. In 1961 with Professor Zelman Cowen, as he then was, he represented the States of Tasmania, Western Australia and South Australia before the Privy Council in London on the hearing of the *Dennis Hotels* case (1). He was the first Tasmanian Solicitor-General to have achieved that distinction for over fifty years.

His fairness, his objectivity and his recognition that his first duty was to the law and to the Court ideally qualified him as a Solicitor-General and he fulfilled his duties in that office with distinction and in accordance with its highest traditions.

But even more so did those qualities fit him for judicial office and on 27th February, 1968, he was appointed a judge of this Court in the place of Sir Marcus Gibson who had retired the month before.

(1) *Dennis Hotels Pty. Ltd. v. State of Victoria*, (1962) A.C. 25, 104 C.L.R. 621.

During the decade that he was on the bench Chambers J. made a most substantial contribution to the work of this Court in all its aspects. The law reports for those years are filled with examples of his capacity to inform everything he did with a sound combination of legal learning and good practical sense. And perhaps this was particularly so in the criminal law field in which he had a grasp of principle and a knowledge of the provisions and the working of our *Criminal Code* that few could emulate.

But above all he had a sure instinct for justice, an instinct which never permitted him to regard the law as some kind of abstraction to be administered impersonally or mechanistically. He had a tolerant understanding of human nature and its weaknesses and he never forgot the personal human problems and conflicts that lay behind the cases with which he had to deal.

In Court he was a patient and understanding judge and I know that he will be particularly remembered by the many young or inexperienced counsel who have benefited from his help and encouragement.

He was not an assertive man but behind his quiet manner was an acutely perceptive observer of his fellows, a man of warmth and a man who had a good sense of humour which very occasionally, in appropriate cases, he allowed to emerge in his work.

Chambers J.'s contributions were not confined to the law. A strong member of his Church, he was Church Advocate and later Chancellor of the Anglican Diocese of Tasmania. He was inaugural Chairman of the Board of St. Michael's Collegiate School. He always maintained his interest in sport and I know that he gained considerable satisfaction and pleasure from fulfilling his functions as Patron of the Sandy Bay Football Club.

Now he has gone.

The members of this Court have lost a judicial brother but all of us have lost a good and gentle friend.

We extend our warmest sympathy to Chambers J.'s widow and to his mother, to his daughters, Caroline and Angela, and their families and to his brothers, John, Tom and Leo, and their families.

R. C. Jennings, Q.C., S.-G., said: It is my privilege on behalf of the Attorney-General of Tasmania to pay tribute and respect to a truly well-beloved judge of this honourable Court. The Attorney represents the Government of Tasmania, and the Government represents the people of Tasmania. It is therefore fitting that I should speak of his service to the Crown and the people of Tasmania; a service which was indeed most distinguished and dedicated.

Those of us who were privileged to work with him for many years knew well the qualities which won him admiration and respect and I am sure that all over Tasmania today there are hundreds of people who have served on juries that he charged who observed those same qualities on the short occasions that they, in effect, were working with him in the same cause.

His quiet dignified manner was always present and it will not be surprising to those who are too young to know, to learn that he displayed those qualities which so eminently fitted him for judicial office in his earliest days at the Bar. I was one who was privileged to work in Courts with him, but more often against him, from my earliest days and it is appropriate, I think, that I should recall — as others who had the same privilege will recall — the impressions he conveyed in those very early days. He was indeed a worthy adversary, just and extremely competent. He appeared to have a facility for a certain detachment from the tragic or sordid facts with which the Court was concerned, but at the same time one was conscious he had a deep understanding of the human emotions involved. His language was never intemperate or inflammatory. He, as I recall, was always reluctant and most carefully considered the Crown's position before he would attack the character of an accused person whose character was entitled to be attacked. He would always offer to the defence, in the highest traditions of the Crown, any evidence which he did not propose to use, any witnesses he had decided not to call. In his address to the jury he was forceful, well reasoned but appropriately dispassionate. He never sought to arouse their feelings and when the result came he always accepted it as the jury's decision, never revealing either elation or dismay at the result.

But let me speak, perhaps, of his most endearing quality of all. He was undoubtedly a very gentle man, a true gentleman in all senses of the word. He was gentle to all manner of men in all manners of ways and always. If he saw any hope as a judge he was merciful, but when it was his duty to be severe he was able to perform that duty in the gentlest manner. It is well-known that a judge in a small community faces the risk of living at times a lonely life, but our late and learned judge was not one to hide in an ivory tower. He was, as your Honour has mentioned, a lover of sport. An enthusiast not only as a follower of cricket and a former cricket player himself, but also on the bowling green where he earned the companionship of his fellows. But perhaps the greatest witness to the fact that he never lost the common touch was his nomination and acceptance of the office of Patron of the Sandy Bay Football Club. One suspects that his marked partisanship in this area was a welcome relief to him from the strict role of impartiality that he had chosen and observed for his more serious vocation.

Yesterday's gathering and today's bear witness to the fact that he will be missed by many, sadly missed, for a long time.

We all know that your Honours will miss his daily friendship and we all know that his family will sorely miss his love and affection. To his wife and mother and to his daughters and his brothers, on behalf of the Government, I extend the deepest sympathy. On behalf, too, of public servants throughout the State and in particular from many friends that he won and kept in the department where he worked for so long, and where I, in fact, was privileged to work with him for one year in the sixties, I also extend their deepest sorrow at his untimely passing and trust that his family will be strengthened by the knowledge that the community owes a debt of the deepest gratitude for a life of most loyal service.

F. J. Lillas (President of the Law Society) said: By virtue of my office I speak for all the legal practitioners of this State and express on their behalf our sorrow at his Honour's untimely death. We have lost a man who was a friend to all the profession and who brought to his calling not only learning, but the Christian virtues of charity and humility in no small measure.

We mourn his passing.

To his family, whose loss is greater than ours, we extend our sympathy.

We will keep his memory green.

Ian Elliott (Southern Vice-President of the Bar Association) said: As Southern Vice-President of the Bar Association I rise to pay my respects to the memory of Chambers J. on behalf of the barristers who have been privileged to appear before him. Before doing so I would like to convey the deep regret of our State President, C. R. Wright, who is unfortunately required to be inter-State.

Although it is necessary, and indeed desirable, to catalogue the achievements of worthy judges on their death or retirement, one cannot help thinking that a rehearsal of Chambers J.'s undoubted achievements becomes a formalized litany which cannot, in any adequate way, convey the real nature of the man. Counsel and litigants who appeared before his Honour could not fail to appreciate his courtesy which, coupled with his knowledge of the law, and his integrity, made him a judge of great stature. A panegyric delivered in the High Court of Australia on the occasion of the death of Sir Douglas Menzies eulogized Sir Douglas in the following terms:

"He was well equipped by training, experience, by character and by disposition to perform his functions. His temperament was well suited to do judicial work. He was kind and fairminded. He retained a lively appreciation of the difficulties of practising in Court. He displayed a willingness to ensure his own understanding of the argument put before him."(2)

(2) (1974), 130 C.L.R. viii.

These words could well have been written with Chambers J. in mind. One aspect of our judge that will always be remembered is the whimsical sense of humour which his Honour always applied kindly and never at the expense of justice, but nevertheless gives us a significant further insight into him. I recollect one case involving the testamentary capacity of an elderly man which demonstrates my point. His Honour's judgment in part reads:

"Because he was an old man living alone the constable used to visit him often, sometimes two or three days a week and staying for periods ranging from thirty minutes to an hour. He said that even if not in uniform, the deceased always recognised him and conversed with him intelligently. The witness said that the deceased appeared to be deeply religious as he spoke of conversing with the Lord and hearing voices from heaven. Whether or not this is to be taken as an indication of mental instability would seem to me to depend upon what the deceased really meant when he said such things. It is a tenet of the Christian faith that man may converse with the Lord through prayer and if the deceased heard voices from heaven, he would appear to have been in good company — see Rev. XIV, 13 and many other similar references in that book of the New Testament."

Although one may read a gentle irony into his Honour's judgment, there is no doubt that these words exemplify his adherence to the Christian ethic and serve to illustrate the high moral approach which his Honour had to the administration of justice.

On behalf of the Bar Association we extend our sympathy to his Honour's family, and the Bar Association accordingly pays tribute to a fine friend, a kind man and a wise judge.

On 7th November, 1978, MERVYN GEORGE EVERETT, Q.C. was appointed a judge of the Supreme Court in the place of the Honourable DAVID MONTAGU CHAMBERS.