

1998-1999

THE
TASMANIAN
REPORTS

THE AUTHORISED REPORTS OF DECISIONS OF
THE SUPREME COURT OF TASMANIA

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VOLUME 8

PUBLISHED FOR THE
COUNCIL OF LAW REPORTING
OF TASMANIA BY

LBC INFORMATION SERVICES
2000

Published by

**LBC Information Services
100 Harris Street, Pyrmont, Sydney, NSW**

ISSN 0085-7106

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Regulatory Group Asia Pacific Limited
ACN 058 914 668**

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

The Hon WILLIAM JOHN ELLIS COX, RFD, ED
Chief Justice

The Hon PETER GEORGE UNDERWOOD

The Hon CHRISTOPHER REGINALD WRIGHT

The Hon EWAN CHARLES CRAWFORD

The Hon PIERRE WILLIAM SLICER

The Hon PETER ETHRINGTON EVANS

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MEMORANDA

On Thursday 15 July 1999 at a special sitting of the Full Court before the Full Bench to mark the retirement of the Master, Mr R Southee, Cox CJ said:

"The Court is sitting today to acknowledge the contribution made to the attainment of its goal of administering justice according to law by the retiring Master, Mr R C Southee. Over its 175 year history the Court has been well served by its Masters of whom there have in fact only been three. The first, Joseph Hone held office between 1824 and 1836 and again between 1840 and 1857. There was then a gap of over a hundred years before the office was revived in 1960 with the appointment of Mr C G Brettingham-Moore, who for a time combined the role of Master and Registrar before those offices were again separated in 1975. Upon Mr Brettingham-Moore's appointment as a judge in 1984 Mr Southee was appointed to replace him as Master.

In the last 40 years since its revival, the importance of the office of Master has been amply demonstrated. The Master has been invaluable in conducting much of the interlocutory and other chamber business of the Court. He has also heard and disposed of a considerable number of causes commenced in this Court, but diverted to him as arbitrator with the consent of the parties. In addition, he has fulfilled the onerous task of assessing many thousands of claims for compensation under the Criminal Injuries Compensation Act, a jurisdiction which has grown exponentially. Other tasks in the form of chairman of sundry tribunals have been entrusted to him. In all these endeavours, Master Southee has shown himself to be fair, courteous and conscientious, and he has carried them out to universal satisfaction.

He leaves us now by statutory prescription, having attained the age of mandatory retirement, but I know he does not intend to divorce himself from the law and that he will find a fruitful but hopefully more relaxing role to fulfil within the profession.

On behalf of the Court I thank him for his fifteen years of devoted service and I wish him every satisfaction in his new role.

Mr Attorney?

THE ATTORNEY-GENERAL: May it please the Court. Today's ceremonial sitting of the Court affords me the opportunity on behalf of the Government and the people of Tasmania to sincerely thank the Master on his retirement from that office for his efforts in the many public roles that he has undertaken in the last fifteen years. Of course, Mr Southee's principal appointment was that of Master. He was appointed to that office in March, 1984 when his predecessor the late Brettingham-Moore J was appointed a judge of this Court.

As the former Chief Justice Sir Guy Green said:

'Since the office of the Master was separated from the office of Registrar in 1975 the office of Master has become an integral and important part of the Supreme Court of Tasmania and within the limits of its jurisdiction, the impact upon litigants of the Master's judicial work can be properly equated with that of a judge.'

However, with Mr Southee's appointment of Master came a number of other important judicial functions. Mr Southee was vested with jurisdiction to act as Chairman of the Motor Accidents' Compensation Tribunal, and as Master has been responsible for the resolution of applications under the Criminal Injuries Compensation Act 1976, a jurisdiction that has seen enormous increase. Mr Southee also sat as Chairman of the Environmental Appeal Board between 1984 and 1993, was the Chairman of its successor, the former Planning Appeal Board, and was appointed as presiding member of the Board's successor, the Resource Management and Planning Appeal Tribunal. I am aware Mr Southee was recently re-appointed to that Tribunal for a further five years.

In carrying out all these functions the Master has shown remarkable patience, scrupulous fairness and great skill. The former District Registrar, John Bendall, recently described Mr Southee as 'a gentleman and a gentle man'.

For many Tasmanian practitioners, as junior practitioners, their first experience of appearing in the Supreme Court jurisdiction has been in the Master's Court. Master, these practitioners remember you kindly for the guidance you have shown during their times of inexperience. Everyone would agree that you conduct your court with a deep sense of respect for all of the litigants who come before it, practitioners and non-practitioners.

For all of these things I extend to you, on behalf of the Government, my thanks for your excellent service to the Tasmanian community. Master, may you have a long and satisfying retirement. With your continued interests in legal matters I am sure it will be stimulating, but it may also leave you more time to enjoy with your wife and friends, play golf, walk the dogs and follow the fortunes of the University of Tasmania Football Club.

CHIEF JUSTICE: Thank you Mr Attorney.

CHIEF JUSTICE: Mr Bugg?

MR BUGG: If it please the Court, it gives me great pleasure to address the Court on behalf of the Society and the profession at large at this Ceremonial Sitting to mark the retirement of Richard Carter Southee, or Rick as he is known to many in less formal surroundings, Master of the Court. Master, you will be missed by those members of the profession

who appear in your court and before the tribunals you have headed. In your role as Master you have always shown great dignity, courtesy and patience in performing your functions.

Usually when preparing an address of this nature it is necessary to do some background research on the person who is the subject of the address. However, in your case Master, that hasn't been necessary because of the first hand experiences both my partners and I have had with you. I propose to refer to two of those this morning because they clearly show aspects of your character which you have displayed in your role as Master.

At a considerably younger age you were apparently a reasonably dab hand at Australian Rules Football. I've been told by one of your former team members — and a much shorter one at that — that you could always be relied upon to rise above the pack, almost in slow motion to take a safe mark before taking a well-considered kick. In a similar way you have always risen above that frequently large throng — sometimes a pack — of practitioners who have gathered for your 9.30am listings to make a well-considered decision.

Some years ago I was at your table for the formal dinner of the annual Bar Association Conference. As is sometimes the case at so-called resorts, the efficiency of delivery of the meal's courses was less than acceptable. As is always the case at Bar Association Conference dinners, the efficiency of the delivery of the food far from matched the efficiency of either the delivery or consumption of the liquid refreshment. As midnight approached and the prospects of receiving a dessert receded, while some - at other tables I hasten to add - resorted to provocative and quite audible language to describe the late arrival of desserts, you simply and calmly commented 'they'll be delivering breakfast soon'. You have always manifested a similar level of patience and a similar use of temperate language in your role as Master, despite provocation on occasions that would tempt many to take a different approach.

The first experience in the Supreme Court for most apprentices at law and younger practitioners is the Master's court. Those apprentices and younger practitioners who have appeared in your court could not quarrel with their treatment at your hands, because you have always shown great courtesy towards them. The homily you sometimes have been required to deliver to the effect 'what would the parties have to say to all of this were they in the back of the courtroom' has been very effective in assisting practitioners to focus on the larger picture and what they should be attempting to achieve.

Master, in your distinguished career you have served on many community-based boards and performed much voluntary work. The

community is no doubt indebted to you for that. You have served as a member of the Council of the Law Society, and as a member of the Society's Executive. The Society is indebted to you for that.

On behalf of the Society and the profession, I wish both you and your wife the very best for a long, happy and healthy retirement. No doubt your retirement will afford the two of you more time to walk your faithful Labradors.

If it please the Court.

CHIEF JUSTICE: Thank you. Mr Holt?

MR HOLT: Thank you — may it please the Court. In 1986 the then Chief Justice, Sir Guy Green said of Master Southee's predecessor Mr Brettingham-Moore:

'Because of the diverse nature of the offices which he held and the breadth of the Master's jurisdiction, Mr Brettingham-Moore was called upon to undertake nearly every facet of judicial work. Exercising a wide range of functions of that kind is more difficult than working in more specialised legal fields, but Mr Brettingham-Moore did so with skill, expedition and scrupulous fairness, and as a result he was regarded with respect and admiration by the profession, litigants, the government and the public.'

I have repeated Sir Guy's words because they apply equally to you, Master Southee. Over the last fifteen years you have undertaken a wide range of responsibilities. As a Chairman of the Environmental Appeal Board you were required to evaluate complex botanical, zoological, engineering, geo-technical and financial evidence and make decisions balancing economic and practical considerations with present and future environmental impacts.

As presiding member of the Resource Management and Planning Appeal Tribunal, you were called upon to apply broadly expressed rules in planning instruments without unnecessary resort to technicality, but with flexibility and common sense. As Master, you were called upon to consider and apply often highly technical rules to complicated interlocutory proceedings brought before you. Your responsibilities extended to protecting the interests of infant plaintiffs in settlement negotiations, making awards under the Criminal Injuries Compensation Act and assessing damages in civil cases referred to you. Throughout the whole of the last fifteen years and in every jurisdiction in which you have adjudicated, you have without exception been held by the legal profession in the highest regard, not only for your skill and fairness, but also for your courtesy, patience and helpfulness.

Master, the members of the Tasmanian Bar Association regret your departure and wish you a happy and fulfilling retirement.

CHIEF JUSTICE: Thank you Mr Holt. I invite the Master to respond.

MASTER: Thank you, Chief Justice, Mr Attorney, and presidents Bugg and Holt for your very kind remarks. In self-evaluation I will have to apply a generous discount to all that you said just in case I get the false impression that there is a small halo above my head.

I would like to thank the Registrar and all his staff for the unfailing assistance they have given to me in the administration of the office and the listing of cases. It has been continuous and outstanding. Also, to the transcribers for the speed and accuracy in which they have done the transcript of some fairly complicated and technical cases. Without them my judgments would have been of much poorer quality than they are. Also to the judges' secretaries who likewise assisted me without fail on many occasions and to the librarian, Dorothy Shea, who has been able to find on the computer the most obscurely listed case at quick notice and has helped me considerably. Then to a range of associates I have had over the fifteen years commencing with Necia Gambolati, Graham McCabe, Ron Sonners, Tim Bullard and my present associate, Max Bronson, who has borne the ever-increasing work load of recent years. To those persons, I would not have been able to deliver the service that I have without them keeping me on the rails on many occasions.

Without detaining you for too long, one doesn't sit in the court with blinkers on and just purely deal with the cases before him. I would like to just mention a couple of observations that I have noted about the development of law in general. In recent years the High Court has been said to be innovative and has branched out in making law rather than declaring it. I don't think that is altogether true. I think that that has always been one function of the Court, and if I could just cite one example of how the statute law and the common law has developed alongside one another.

In the 1970s, it was necessary to invoke the Federal *Trade Practices Act* 1974. It covered a wide range of commercial conduct which needed to be brought into operation quickly and to cover a very wide field including deceptive conduct and all the other branches of s52 and the other sections. But during that same time there has been a very rapid development by the common law in the doctrine of estoppel, that is that a person who makes a representation which is acted on by another can not then turn around and deny it. And the High Court and State courts have developed this doctrine of estoppel with all its subtleties in a fashion that Denning LJ in 1950 in the High Trees case could not have imagined. And that development of doctrine along with such concepts as unjust enrichment and unconscionable conduct which no law student of my day would have been game enough to put in a pleading, have now become respectable and I think it illustrates that whilst the legislature via the Parliament develops the law in many branches of the statutory concept, so there are areas within the common law such as the doctrine

of estoppel that I mentioned that could not be possibly dealt with by a statute that had been developed by the courts. And these two branches in my view complement one another and will necessarily do so in the future.

Just one final observation on that matter is the famous case of *Donaghue v Stephenson*, and the development of the law of negligence since 1932. We now see within the sporting arena the law is looking at the duty of care of sporting organisations to those participants who take part in them — and I have no doubt we will see a rapid development there in the future.

But back to the big bug-bear of the courts which has always concerned me, and I'm sure it concerns any judicial officer, is the question of costs and here I would like to specially refer to what is colloquially known as the 'Australian battler', the men and women on salary and wages who pay every cent of their tax. They have to meet rates, taxes, insurance and a myriad of expenses associated with families. And those people, the vast mass of them, meet their debts without which commercial transactions would be impossible. But when those Australian battlers seek the availability of the Court often through no fault of their own, the access is denied to them because of the question of costs and no matter how intelligent they might be as lay persons, to come to grips quickly with the procedures of the law is beyond them. That position has been aggravated by the recent restrictions in legal aid. And having done recently a course in mediation I realise that is one avenue which will help by court-directed rules as to mediation in allowing the resolution of those cases at an early date and before costs have been incurred, to settle matters outside the court structure properly.

On a lighter note, I would just like to refer to another concept that interested me since my law school days, and that was the 'reasonable man' test in the law. I was taught at law school that many of the decisions would result from the 'reasonable man', the man on the Clapham omnibus as it was called. In practice, I failed to find him, and I thought when I go on to become Master he might not be so illusive, but alas I had no success there. But one morning a couple of years ago sitting in Launceston, I had a young woman barrister who was desperately trying to get a certificate of readiness signed so the matter could get to trial, but she was being met at every point by her male counterpart who was frustrating every attempt to achieve that end, and finally she exclaimed to me — she said 'Master, I don't think I am an unreasonable woman', and I went back to my chambers and I realised that whilst I hadn't found the reasonable man that morning I'd found the reasonable woman. And, of course, for diplomatic reasons, I include my wife in that category. She has been of sterling assistance to me during

the fifteen years. Whilst practitioners may think that I have observed most of the legal points, she's put up with my absent-mindedness on non-legal matters at home with a tolerance that would stretch anyone's imagination and I thank her for it.

I would also like to comment on the quality and calibre of the young men and women who have appeared before me over the 15 years. I can say without hesitation they are far more advanced than my generation were when we came into the law. They have to deal with the complex matters of the *Trade Practices Act*, the vast expansion in the *Corporations Law*, the most complicated *Taxation Acts* and it is really a great credit to them how they have managed to cope with all those daunting tasks.

In reference to appearances before me, I wish to thank them for the confidence and good will that they have shown without fail to me during that time. It is not always easy to take defeat in a case but they have done so with a graciousness and professionalism which is indeed inspiring. I am sure that if the entry of young men and women into the other professions and vocations in Tasmania is as high as they are into the law, then this State has a very bright future indeed and I thank them for the goodwill and confidence they have shown to me.

To the Chief Justice, I thank you for the continued help that you have given to me over the years and to your predecessor Sir Guy Green and to Underwood, J. Slicer, J. and Evans J. for being so kind and gracious to sit with me on this occasion today.

And finally to each and every one of you, for your attendance today. You have put aside your busy personal and business activities to be with me on this last occasion, and it is something that I will always remember. Your presence has been something that can't be valued in monetary or human terms - it is something that I will always treasure.

Thank you.

CHIEF JUSTICE: That concludes the proceedings, ladies and gentlemen. I, too, thank you for your attendance. The Court will now adjourn."

THE COURT ADJOURNED

On 6 September 1999, Stephen James Holt was appointed Master of the Supreme Court of Tasmania.