

**THE  
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REPORTS  
1986**

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PART 2

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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, K.B.E.,  
Chief Justice

The Hon. FRANCIS MERVYN NEASEY

The Hon. ROBERT RICHARD NETTLEFOLD

The Hon. HENRY EDWARD COSGROVE

The Hon. WILLIAM JOHN ELLIS COX, R.F.D., E.D.

The Hon. CECIL GEORGE BRETtingham-MOORE, M.C.

The Hon. PETER GEORGE UNDERWOOD

The Hon. CHRISTOPHER REGINALD WRIGHT

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## **CORRIGENDA**

1984 Tas.R.

P.iii, for "CYRIL GEORGE" read "CECIL GEORGE."

P.v, for "CYRIL GEORGE" twice appearing read "CECIL GEORGE."

1985 Tas.R.

P.iii, for "CYRIL GEORGE" read "CECIL GEORGE."

P.151, L.10, for "draftman" read "draftsman."

1986 Tas.R.

p.29, L.15, for "Serial No. 51/1984" read "1984 Tas.R.146."

**MEMORANDA**

On 19th February, 1986, the Hon. JOHN MYLES BENNETT, M.H.A. was appointed Attorney-General in place of the Hon. G.A. PEARSALL, M.H.A.

On 14th March, 1986, the Hon. CECIL GEORGE BRETtingham-MOORE, M.C. resigned his office as a judge of the Supreme Court.

On 29th April, 1986, CHRISTOPHER REGINALD WRIGHT, Q.C. S.-G., was appointed a judge of the Supreme Court in the place of the Hon. CECIL GEORGE BRETtingham-MOORE, M.C.

On 11th April, 1986, WILLIAM CHRISTOPHER ROBIN BALE was appointed Solicitor General.

On 16th May, 1986, at a special sitting of the Supreme Court, before the full bench, GREEN C.J. said:

The Court has been convened today to express our sorrow at the death of a former Judge of this Court, The Honourable Cecil George Brettingham-Moore, known to everyone as Tim Brettingham-Moore, and to pay tribute to him. Mr. Brettingham-Moore was born on 11 April 1920, the son of H. M. Brettingham-Moore. He was educated at the Hutchins School, and the University of Tasmania, where he obtained the degree of Bachelor of Laws in 1947. He was admitted to the Bar in 1948 and then embarked upon a legal career in the course of which he made a contribution to the administration of the law which I think must be unique in the history of this State. After being in private practice for nine years, Mr. Brettingham-Moore served in a remarkably wide range of judicial and quasi-judicial capacities. These included being a magistrate, a commissioner of Courts of Requests, and Chairman of a number of statutory bodies, including the Municipal Commission, the Environment Protection Appeal Board, and the Motor Accidents Compensation Tribunal. But of course, the judicial office in which he made his most substantial contribution before his appointment as a Judge was as Master of the Supreme Court. The office of Master had been abolished in 1857, but in 1960 it was re-established, and Mr. Brettingham-Moore was appointed to it. In an interesting article about the office of Master, which was published in the Tasmanian University Law Review, Mr. Brettingham-Moore expressed his view that the Master “. . . can play no insignificant part in the administration of the law”. That was a characteristic understatement of the impact which the establishment of that office has had upon the work of the Supreme Court. The office of Master is now fully integrated as an indispensable part of the Court structure which has been and continues to be of very great benefit to the Court and in large measure the position and the status which the office now has are directly attributable to the personal qualities of its first occupant in modern times.

Because of the diverse nature of the offices which he held, and the breadth of the Master's jurisdiction, Mr. Brettingham-Moore was

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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. All those attributes admirably fitted him for appointment as a Judge of the Supreme Court, and on 21 March 1984, he took his seat on this Bench. Unhappily we only had the benefit of his work and the privilege of having him as our judicial brother until 14 March 1986, when he retired because of ill health. However, his industry, experience, professionalism and judicial temperament all combined to make him a very highly valued member of the Court and during that period he made a most substantial contribution to all aspects of its work.

Mr. Brettingham-Moore's contribution to the law was not confined to judicial work. He was, as well, at different times, Deputy Recorder of Titles, Registrar of this Court, Chairman of the Law Reform Commission and a part-time lecturer in the Faculty of Law. Mr. Brettingham-Moore also served his country and his community in a variety of other ways. He was a member of the Hobart Public Hospitals Board, Chairman of the Australian Forces Overseas Fund and for many years made a very significant contribution to all aspects of the work of Legacy, work for which, because of that fine organisation's tradition of quietly effective personal service, Tim Brettingham-Moore was especially well suited.

He served with the A.I.F. from 1940 to 1946 in Palestine, Syria and Java. In 1942 he was taken prisoner and was a prisoner of war for the remainder of the war. He was awarded the Military Cross and I would like to read to you the citation for that award. It reads as follows:

“Lieutenant Brettingham-Moore showed outstanding gallantry throughout the operation of Buitenzorg from the 2nd to the 5th March 1942. His Company Commander and all other Company officers were wounded or taken prisoner at a critical stage of the fighting, leaving Lieutenant Brettingham-Moore as the only officer of the Company. Lieutenant Brettingham-Moore carried on un-aided, and organised and personally led counter-attacks against the enemy who was continuously endeavouring to outflank him. His personal courage and example in the face of fierce enemy fire inspired his men to hold on against far superior numbers of the enemy.”

I have read that citation because it indicates that right at the beginning of his adult life Mr. Brettingham-Moore was already exhibiting those special personal attributes which were to characterise the life of service which was to follow: courage, a capacity for sustained effort, a readiness to assume personal responsibility and a refusal to even contemplate not doing his duty. Add to those attributes his courtesy, his kindness and his concern for others, and one begins to understand why he was regarded with such respect and affection by all those who knew him.

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We extend our warmest sympathy and condolences to Mr. Brettingham-Moore's wife, Helen, his daughter Anne, and his sons Peter and Ian, and to his brother John, and his sister Margaret.

*W.C.R. Bale Q.C., S-G.:* May it please the Court. I am asked by the Attorney-General to express his regret for his inability to participate in this special sitting of the Supreme Court, and I address the following remarks on his behalf.

With the premature retirement and untimely passing of Mr. Justice Brettingham-Moore, Tasmania has lost a dedicated and devoted servant. All those of us who enjoyed the privilege of working with or before him were immediately impressed with two outstanding characteristics — immense energy and great humanity. These characteristics were reflected in everything he did. Your Honour, the Chief Justice, has provided a comprehensive catalogue of the many positions which Tim Brettingham-Moore held and the tasks which he undertook. This catalogue is itself eloquent proof of his energy and dedication, particularly when it is remembered that he actively sought out much of what he did because he felt that his time was not being fully utilised. He never saw giving so generously of himself as a chore. Rather, it was a labour of love and Tim took just pride in achievement through endeavour. His six years of service as Chairman of the Municipal Commission was a source of special pride and satisfaction to him, and of untold value to this State. I also believe that his five year chairmanship of the Law Reform Commission commencing in 1975 was regarded by him as a great challenge. They were productive years for the Commission, although I know that he, personally, was disappointed with the extent to which the reforms which were proposed have been implemented.

Perhaps not so well known is the trepidation with which he approached the task of sitting as a Judge in the criminal jurisdiction of this Court. The fact that he came to enjoy this side of his work on the Bench, even more perhaps, than civil work, is but one example of the compassion which we will all long remember. The law has lost a fine lawyer, a gentleman and a good friend.

The Attorney-General would wish me to say that the Government joins with the family in mourning Mr. Justice Brettingham-Moore's loss and has welcomed this opportunity to place on record its warm appreciation of the great service which his Honour for so long rendered to this State. May it please.

*P.V. Manser\**, May it please the Court, it is my privilege on behalf of the Law Society of Tasmania to pay tribute to the memory of a man who over a career spanning some thirty-eight years served as a model to his profession. He was, as we know, a distinguished and decorated soldier and through his membership and in many cases his chairmanship of a significant number of public and charitable institutions to which he unselfishly devoted his time and talents, a responsible and caring citizen. Within the profession, I am sure he will

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\*President of the Law Society of Tasmania.



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be remembered particularly for the qualities of unfailing patience, courtesy, impartiality and integrity, which he so consistently displayed in the discharge of the last two offices, as Master and as a Judge, which he held in this Honourable Court. He was indeed a humane and practical administrator of justice. The profession at this time keenly feels his loss and will continue to do so for a long time. To his family, also, we offer our profound sympathy in their bereavement.

*John Kable:* If it please the Court, as President of the Tasmanian Bar Association, I rise to pay my respects to the memory of Mr. C. G. Brettingham-Moore, on behalf of all members of the Association. Almost all members of the Association would have appeared before Mr. Brettingham-Moore during the time that he occupied the office of Master of the Supreme Court and/or lately while his Honour was a member of the Supreme Court of Tasmania. When his Honour took his seat upon the Bench it was said by those who appeared in this Court on that day, that in his role as Master of the Court, and in the practice of his profession his Honour performed with distinction.

It was most appropriately observed that his Honour's experience was such as would make it likely that both litigants and lawyers would be comfortable in the knowledge that his Honour would fulfil his new appointment with honour and impartiality. That those predictions came true is well known to all persons present here today. His concern for the plight of the litigant and those whose conduct was such as to cause them to find themselves in the criminal court was well known. Whilst not one to shrink from the often difficult task of sentencing, his Honour was a person who had an understanding of human failings. His Honour was most conscious of his responsibility to the community, but at all times compassionate in the performance of what must have often been difficult duty.

Your Honour the Chief Justice has already made reference to his work as Master. His Honour's concern for litigants is well exemplified by his Honour's comments upon his ascension to the Bench, when he said:

"Too often, in my view, parties become adversaries and are forced into courts because of the attitudes of their legal advisers. It seems to me that if there was some softening of legal attitudes before the parties were irretrievably committed to a stand-off position it would go some of the way towards easing the tensions in society."

Those comments well evidence his Honour's approach to his judicial duties. All will remember his Honour's capacity for getting to the heart of the case before him and urging counsel to adopt the same approach.

I am sure that I speak for all members of the Tasmanian Bar Association when I extend our sympathy to his family and publicly record the appreciation of the members of that Association to his Honour for his assistance to our members whilst his Honour occupied a seat in this Honourable Court, and in his many years as Registrar and Master of this Court. If it please the Court.