

THE  
TASMANIAN  
REPORTS  
1990

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PUBLISHED IN HOBART FOR  
THE COUNCIL OF LAW REPORTING  
OF TASMANIA BY

THE LAW BOOK COMPANY LIMITED

1992

Published by

The Law Book Company Limited  
44–50 Waterloo Road, North Ryde, N.S.W.  
389–393 Lonsdale Street, Melbourne, Victoria  
40 Queen Street, Brisbane, Queensland  
81 St George's Terrace, Perth, W.A.

ISSN 0085–7106

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Printed by  
North Western Printing Service Pty. Ltd.,  
Burnie, Tasmania.

**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, A.O.

The Hon. ROBERT RICHARD NETTLEFOLD

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

The Hon. PETER GEORGE UNDERWOOD

The Hon. CHRISTOPHER REGINALD WRIGHT

The Hon. EWAN CHARLES CRAWFORD

The Hon. WILLIAM PETER MARIA ZEEMAN

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## CORRIGENDA

1988 Tas.R. ii  
and  
1989 Tas.R. ii

*for* "THE HON. EWEN CHARLES CRAWFORD *read* "THE HON. EWAN CHARLES CRAWFORD".

1990 Tas.R.

Page 66, line 5: *after* "p.10" *insert* ", followed".

**MEMORANDA**

On 25 May 1990, the Hon. ROBERT RICHARD NETTLEFOLD resigned his office as a judge of the Supreme Court.

On 30 May 1990, WILLIAM PETER MARIA ZEEMAN was appointed a judge of the Supreme Court in the place of the Hon. ROBERT RICHARD NETTLEFOLD.

On 12 September 1990 at a special sitting of the Supreme Court GREEN C.J. said: This Court has been convened today to enable us to honour and to say farewell to the senior puisne judge of the court, Neasey J., who tomorrow attains the statutory age of retirement.

I would like to thank everyone in this courtroom for joining us today. We are particularly honoured by the presence of the Attorney-General, Mr. Patmore, Wood J., a senior judge of the Family Court of Australia, the senior magistrate, Mr. Morris, and five of his brother magistrates, Prof. Carey and Prof. Chalmers. I would also like to extend a particularly warm welcome to a former judge of this Court, Mr. Henry Cosgrove. It is very pleasing indeed to have him on this bench with us once again and it is especially appropriate that he should be here because as well as being former judicial colleagues, he and Neasey J. were also members of the same firm when they were in practice. Wright J. has asked me to say how sorry he is that his judicial commitments in Burnie have prevented him from being able to attend today and he has asked me to pass on his best wishes to his Honour.

Ladies and gentlemen, there can be few people in Australia who have made such a substantial contribution to the law and to the community in so many different ways as has Neasey J.

Neasey J. commenced his working life as a student teacher but after a short period, joined the A.I.F. in which he served during World War II in Australia, Papua and Morotai. After his discharge, he enrolled at the University of Tasmania and in 1949 graduated with the Degree of Bachelor of Laws with Honours. He was admitted to the bar in 1950. In 1963 his Honour was appointed a judge of this Court following the retirement of Ellis Cox J. Whilst in practice, Neasey J. was elected as the

president of the Tasmanian Bar Association and for several years he was a part-time lecturer at the Law School of the University of Tasmania, in which capacity he taught evidence to many Tasmanian lawyers of whom no fewer than four are currently members of this Court.

During the period since his appointment to the bench, Neasey J. has held several important appointments. In 1968 he was appointed as the first chairman of the Board of Management of the Royal Derwent Hospital and in 1973 he was appointed by the Tasmanian Government as a Royal Commissioner to inquire into Tasmania's urban transport. He was a member of the Commonwealth Marine Board of Inquiry into the Tasman Bridge collapse, a chairman of the Tasmanian Law Reform Commission and a part-time member of the Australian Law Reform Commission.

His Honour has an impressive list of academic publications to his credit including an extended article on the contribution to the Australian Constitution made by Andrew Inglis Clark, Senior. A book on Clark which his Honour is writing is also well advanced.

In 1987 his Honour was appointed as an officer of the Order of Australia for his services to the law and to law reform.

But of course today it is Neasey J.'s service as a judge which we are particularly recognising. His Honour has served as a judge of this Court for over twenty-seven years which makes him the longest serving judge of any superior court in Australia. Judges, such as the judges of this Court who are required to exercise the whole of the jurisdiction of a court of plenary jurisdiction, both at the trial level and at the appellate level, need to be possessed of a wide range of very different qualities. Over the last twenty-seven years Neasey J. has amply demonstrated that he is possessed of all those qualities in the fullest measure. His Honour's scholarship and his capacity for legal analysis are recognised throughout the legal community in Australia and of course as well, those qualities are manifest in hundreds of cases to be found in the law reports, particularly, as is to be expected, in reports of cases heard in the appellate jurisdiction. It is not usually regarded as appropriate to refer to individual cases but I would like to mention one recent example of what I might call

Neasey J.'s practical scholarship. It appears in his Honour's reasons for judgment in *Reg. v. Bennett* [1990] Tas.R. 77 and I mentioned that case because in it Neasey J. did something which I think that many of us had concluded was impossible: he presented a succinct, lucid exposition of *Vallance's Case* (1961) 108 C.L.R. 56. If I may say so, it was a very useful parting gift to his judicial brethren.

But notwithstanding his Honour's considerable capacity as a legal scholar, he has never yielded to the temptation to indulge in academic exposition on the bench for its own sake but has always kept steadily in mind that in this Court the main purpose of legal analysis is to isolate the principles which are applicable to the particular case before the court.

But of course Neasey J.'s skills are not confined to legal analysis but include all those other attributes which a trial judge must possess, including a capacity for marshalling evidence and particularly when summing up to a jury – sorting out from the mass of material before the court in a clear and helpful way those facts which are particularly relevant to the elements of the crime with which the court is dealing. As well, his Honour's experience, his intellectual breadth and his personal qualities are such that when he is called upon to exercise a discretion or apply policy considerations, he does so with balance and with wisdom. In short, Neasey J. is not only, as we all have to be, a judicial jack-of-all-trades but he is a master of them all as well.

Today his Honour leaves this Court, but happily he will not be leaving the law. He will, amongst other things, be teaching at the Law School of the University of Tasmania, completing his book on Clark, working towards the Degree of Doctor of Philosophy in which he has enrolled and doing much else besides and will continue to make a most valuable contribution to the law and to the State well into the future. I say that with confidence because I can remember that twenty years ago or so, people were saying that Neasey J. was then at the height of his powers. Well that was perfectly true but his Honour is one of those remarkable people about whom the same thing has been said every year since and I have no doubt that people will continue to say that for many years to come.



If I may conclude by speaking directly to Neasey J., I have no doubt that my judicial brothers share the feeling which I have that it has been a privilege to have worked with you. We shall all miss you very much indeed, both personally and professionally. We extend to you our warmest good wishes for the future.

P.J. PATMORE A.-G.: Your Honour, to mark the occasion of your retirement from the bench it is my pleasure, on behalf of the Government and the people of Tasmania, to express their appreciation for your long and extremely significant contribution to the public affairs of this State and to the development of the law as counsel, judge and law reformer. As his Honour the Chief Justice has already mentioned, you have the honour of being the longest serving puisne judge in the history of Tasmania, having served on the bench for the past twenty-seven years. Your Honour's scholarly judgments, too numerous to mention, always delivered with a minimum of delay, have been cited in courts throughout Australia. It is a tribute to you to note the respect which your judgments are accorded at the highest judicial level in Australia. It is rightly said that your knowledge of the civil and criminal law of this State is unsurpassed. Without in any way derogating from that broad field of knowledge, it is appropriate to draw attention to a very special study of the law of evidence. The application of your knowledge, both as judge of the first instance and as a member of the appellate courts, has been much admired by both the profession and the public.

As a sentencing judge you are known for tempering justice with mercy but never shirking the responsibility of imposing a long sentence where it was warranted.

Your dedication to the law has been demonstrated in many areas, as a lecturer at the University of Tasmania Law School, as a practising barrister and solicitor from 1949 to 1963, as a judge of this Court from 1963 to present, as a member and chairman of the Tasmanian Law Reform Committee, as the inaugural chairman of the Tasmanian Law Reform Commission from 1974 to 1975. One of the most important developments to result from the Tasmanian Law Reform Committee at that time was the recommendation to establish a no-fault compensation scheme

for motor vehicle accident victims, now administered by the M.A.I.B. Indeed, your reputation as a law reformer was nationally recognised with your appointment as a part-time member of the Australian Law Reform Commission from 1980 to 1984. Your efforts in the last mentioned position were specifically related to drafting a uniform national evidence bill and you undertook that task with the stamina and dedication which is your hallmark, involving, as it did, innumerable weekend visits to Sydney in your own time to serve on the Commission.

Your unflagging service to the State is also in evidence from your labours as the chairman of the Board of Management of the Royal Derwent Hospital between 1968 and 1973, from your engagement as a Royal Commissioner into urban transport in 1973 and 1974, as a member of the Court of Marine Inquiry into the sinking of the *Lake Illawarra* which caused the collapse of the Tasman Bridge in 1975 and your frequent service as administrator of the Government of this State.

The Government and the people of Tasmania thank you for your distinguished service to this State, particularly for your accomplishments in the evolution of the law over these past twenty-seven years. We wish you a long, healthy and happy retirement.

ALAN BLOW [President of the Law Society of Tasmania]: It is my very great honour and pleasure to address your Honour, Neasey J., on behalf of the Law Society of Tasmania which represents all legal practitioners practising in this State, a great many of whom are here today.

As has been said, your Honour graduated with honours from the University of Tasmania and having served articles of clerkship with the firm of Murdoch, Clark and Cuthbert, your Honour continued there upon admission and after a year joined the firm which became Murdoch, Clark, Cuthbert and Neasey. Your Honour practised extensively in civil and criminal areas as a barrister and litigious solicitor in that practice until your Honour's elevation to the bench, ultimately practising alongside the Hon. Henry Cosgrove, who has joined your Honours on the bench today and Underwood J.

Your Honour was elevated to the bench on 15 March 1963 so that when your Honour retires tomorrow your Honour's period of service as a judge of this Court will fall two days short of twenty-seven and a half years. Your Honour has been the senior puisne judge since the retirement of Sir George Crawford in December 1981 and, as has been said, your Honour is both the longest serving Supreme Court judge at the present time in this country and the longest serving puisne judge in the history of the Supreme Court of Tasmania.

Your Honour has many qualities which have earned you the great respect of the legal profession. Your Honour has an outstanding legal intellect and has always maintained the dignity of the court. Your Honour has always treated those before you with courtesy and patience and your Honour has always been ready to help junior practitioners. In fact I remember a number of miscellaneous civil business days in Burnie when the list wasn't very burdensome when your Honour took time to teach junior practitioners lessons which a number of them may never forget but in a straightforward way and in a humble way.

Your Honour has always acted with humility on the bench and in the Criminal Court has always treated accused persons with fairness and in sentencing has always afforded mercy in appropriate cases.

Apart from serving as a judge, your Honour has served in positions which were above and beyond the call of duty, for example, in the field of law reform, as has been stated, and as a member of the Court of Marine Inquiry as a result of the Tasman Bridge disaster in 1975. And of course your Honour's retirement is showing signs of being an active one involving, as has been stated, part-time lecturing at the University of Tasmania and the completion of a Ph.D. thesis and it is pleasing also to note that your Honour will be presenting a paper later this month at the Criminal Law Congress in Hobart on the mental element in murder. But apart from your retirement being an active one, I am sure I speak for everybody present here today, in wishing your Honour a happy retirement and a long one.

PIERRE SLICER [President of the Tasmanian Bar Association]: Your Honour, having learnt to trust and respect your judgments, sometimes instantaneously and sometimes only

after a passage of time, depending on the result, I turned to the 1963 Law Reports to ascertain the first reported decision of your Honour. The 1963 Reports record that on 18 March 1963 your Honour received a commission as a judge of the Supreme Court of Tasmania. The first reported case bearing your name is *Cornwall Coal Company Ltd. v. Parsons* [1963] Tas.S.R. 23, comprising a full bench of the Chief Justice and Crawford and Neasey JJ. The dates are recorded as April 8, October 5 and 31, 1962\*. One is drawn to a conclusion that either the Supreme Court showed intelligent prescience or that your Honour took the view that justice delayed is justice denied. I would prefer to interpret those juxtaposition of dates as indicating that your Honour was ahead of his time. But your Honour possesses a sense of being which is beyond time. You are, and have been, a person of your time yet who retains values and characteristics of the past; you are of your time and beyond it.

You have served your country as a member of the Australian Infantry Forces in time of war. You have served the community as a selfless and conscientious legal practitioner for fifteen years. You have served your society as a Royal Commissioner, a law reform commissioner and as a judge of its laws, whilst maintaining a fond and close-knit family life. But above that you have served us all by retaining a humanness with the qualities of wisdom, intellect, rectitude and compassion.

In 1963 when you were appointed a justice of this Court our society was different. In that year President Kennedy was assassinated, and the days of Camelot are no more. Since you have become a judge of our laws we have lost our naivety, abandoned black and white and sometimes lost our way. Parliament is passing more and more laws, often in response to momentary hate or passion. The executive is engaged in a frenetic pursuit of rule by regulation. We are besieged by media hype in which every issue is the ultimate experience or catastrophe. Our social values are scattered, Camelot indeed is no more. Yet through all of this there is a sense of calmness and purpose and much of that is due to the application by persons

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\*The dates given in the report are wrong. Judgment was given on 9 April 1963. F.D.C-S.

like yourself who apply the law and judge those of us who become intermingled with it. That is why I say that you have been of your time whilst remaining outside of it and beyond it. Your intellect is inspiring but it is your wisdom which has served us best. Your hard work and dedication is well known but it is your honesty and possession of properness which will be cherished. And if someone were to ask me in years to come who you were I would answer, "He was a Renaissance man". A Renaissance man was urbane, civilised and curious, he served his country in war and peace, he could be hard if there was a need but his natural inclination was to betterment, he had learning but a peasant's common sense and above all he had a sense of humour. They are the qualities you have brought to us and in this time of transient values I hope that they will remain after you have left the office of judge.

No matter what is said about you or no matter what is written, I suspect you will follow the advice of Oliver Wendell Holmes, "One's final judge and only rival is one's self." And for what it is worth, the legal profession wishes you to judge yourself well. This is not a farewell. We know that your Honour is proposing to continue to write and to teach so let me remind you of what Bertrand Russell had to say in his essay, *In Praise of Idleness*, "Above all there will be happiness and joy of life instead of frayed nerves, weariness and dyspepsia. The work exacted will be enough to make leisure delightful but not enough to produce exhaustion. Since they will not depend on those pursuits for their livelihood, their originality will be unhampered and there will be no need to conform to the standards set by pundits." Thank you for being you. Accept our wishes that the next part of your life will be as productive and content as the one we are now farewelling. *Ave sed non vale.*

NEASEY J.: Chief Justice, your Honours, including Wood J., former Cosgrove J., Mr. Attorney-General, Mr. President of the Law Society, Mr. President of the Bar Association, ladies and gentlemen. The distinguished former Justice of the High Court of Australia, Sir Frank Kitto, once said in a speech about the art of writing judgments that a judge should, if possible, write his own reasons for judgment in every case, but if he occasionally felt bound to agree with someone else he ought to indicate how far his agreement went and where he disagreed. Today I am

not in a position to do either. My time for writing judgments has passed, and in any case I can hardly be heard to agree or disagree about many of the things that have been said. I think probably the right procedural stance for me is to demur. Today is one of the rare courtroom occasions when the old maxim of justice is disregarded, that both sides should always be heard. But I am very grateful for the compliment you have paid me in taking the trouble to come here today, for the expressions of personal goodwill I have heard, and for the kind, if over generous, things that the speakers have said. I believe it is right to think that these occasions, as well as being a way of saying goodbye to a judge who is going, also serve as a kind of rite of passage for the court itself, as if to say, individuals leave, the institution goes on.

Having sat on this Court now for two-thirds of my professional life, there are some things I am glad to have the opportunity of saying. The first is that I would like to thank all the judicial colleagues, past and present, some of the former now sadly deceased, with whom I have had the privilege of serving. When I was first appointed my seniors were Burbury C.J. and Gibson, Crisp and Crawford JJ., and from them and those who followed them down to the present day, I have received the great benefit of counsel and friendship, always freely given; and I express my deep appreciation for that. I would also like to say that in the years I have been here I have never seen any occasion when proper courtesy and respect were not paid mutually between bench and bar, and I would pay tribute to the bar and to the legal profession generally for the high personal standards of integrity and conduct which are virtually universal in this jurisdiction. All of us in our various roles may fail at times to perform to utmost effectiveness, and indeed there are a few in any walk of life of whom that cannot be said, but I believe that fairness and decency are overwhelmingly characteristic of the conduct of legal affairs in this State.

That is not to say that the law and its administration are not in need of constant improvement. Economic and social conditions are always changing and evolving, and it is a constant struggle for the law to retain its effective relevance by changing with them. I believe that within its own context it is just as necessary to have continuing attention given by lawyers to

reforming the content of laws, and the way they affect the daily life of the community, as it is to have the executive government and parliament passing new statutes and amending old ones. In this connection it has always been a characteristic of the learned professions that even the busiest and most successful practitioners set aside part of their time for voluntary work to serve the general good in some way, whether in their professional associations or in other avenues. I would express the hope that an appreciable number of the profession in this State will always be willing to serve part of that time in helping to improve the law. Other members of the public have a role to play in this area, of course, but in my view skilled and willing lawyers will always have a primary part.

Looking back over the years I have spent here, it seems to me that the administration of justice in this State is fairer now in one respect, and more efficient in a number of ways, than when I started on the bench. As to fairness, when I began, the concept of legal aid was new and funds available for it were small, and most defendants in criminal cases were still obliged to conduct their own defences and there was no escape from that. Now, since the extensive provision of legal aid, the idea of an accused person trying to conduct his own defence is completely foreign, and justice is done so much more amply because of that. As to efficiency, it is almost amusing now to remember that no more than twenty years ago, judges still had to write down manually every word of the evidence, or I should say, every word of the recorded evidence, because verbatim note taking was impossible and the reliability of the record depended a good deal on the judge's ability to combine accurately the question and answer in narrative form. Now, of course, thankfully that is all gone. The court can sit back and concentrate on the evidence and it need not make a note at all if it wishes not to, and a full transcript is available at the end of the day. One result is that cases are heard in less than half the time they used to take under the old way. The other side of the coin, however, is, of course, that there are now three times as many cases. This is an example of how methods and techniques have to keep improving just to keep the system viable.

But there have been in recent years many other effective steps taken to improve efficiency. Our adversary system of

litigation is generous to the point of self-indulgence in the virtually unlimited time it allows for oral argument, cross-examination and so forth. Much expensive time can be wasted in this way, and I believe it will be necessary in the future to consider restraining this over-generous use of time. One very effective measure has been taken already, however, in the requirement that all appellate arguments must now be submitted to the court and to the other side in writing, and in advance. Also in recent times much closer attention has been given in the court itself to what is called case-flow management, and more intensive use of pre-trial procedures in order to speed the flow of civil litigation. I certainly claim no credit for any of the matters I have just mentioned. The younger judges of the court have, if I may say so, given an impressive lead in these areas and have shouldered much of the work load. The Chief Justice gives constant support and encouragement for these measures, and some of the more effective of them were initiated by then Cosgrove J., before his retirement. As I step down from the court, it seems to me that the future promises well for increasingly effective service to the public from the judicial branch.

Before I end, there are some more people whom I wish to thank. Over this lengthy period I have had only three long-term associates and two court attendants. Many of you will remember all of them. I am delighted to see that Major Pritchard and Mr. Klye are able to be present today. They have all been good friends as well as the most diligent and willing fellow workers, and I will always be grateful to them for their help and support. The Registry and court staffs too, in Hobart and in the circuit cities of Launceston and Burnie, have all been most courteous, helpful and co-operative always. May I say again how much I appreciate your coming here today, my fellow members of the legal profession, old friends, and of course, my wife and family. I thank you all.

On 13 September 1990, the Hon. FRANCIS MERVYN NEASEY, A.O., retired from his office as judge of the Supreme Court.