



# THE LAUNCESTON JUDGE DEBATES 1860 -1918

Hon. Justice Stephen Estcourt AM

## An Itinerant Court

From the outset the Supreme Court of Van Diemen's Land was an itinerant court. Chief Justice Pedder first sat in Launceston on about 23 September 1824. The Court remains a travelling court to the present day, embarking eight times each year on four week circuits to Launceston and Burnie.

Although the Court sat regularly in Launceston, and a dedicated court building existed as early as 1826, the question that took many more years to resolve was the appointment of a judge of the Court who would reside there permanently.

To give some context to the debate, in 1826 when John Ward Gleadow, the first solicitor to establish a practice in Launceston, set up his shingle, the settlement had a population of some 2,500 souls, there was no road suitable for traffic between Hobart and Launceston and the journey via a poorly defined track, took three days on horseback. Nonetheless, circuits were busy. In Launceston in January and February 1829, Pedder sentenced twenty-one of those souls to the death penalty. Eight must have escaped the gallows, as the *Launceston Advertiser* of 23 February reported:

On Tuesday last, six unfortunate human beings were launched into eternity. These, with seven that suffered the same fate on Monday, make thirteen launched into eternity within twenty four hours.

Circuits were more regular after the appointment of a second judge. Justice Montagu's ire extended, in April 1840, to the then Lieutenant-Governor, Sir John Franklin, who had advised Montagu that the cottage in Launceston ordinarily reserved for judges on circuit would be unavailable because the Franklins required it when attending an official ball in the town. Montagu wrote to Franklin complaining that it was an affront to him and the Court that Franklin and "his suite" should occupy the cottage at the time of a Court circuit. He also complained to Chief Justice Pedder and the circuit was postponed for two weeks

as a result.

The Court was originally conducted in a Wesleyan chapel in Paterson Street in Launceston until, in 1834, the construction of a dedicated building commenced further along Paterson Street. That building, when completed was used until the Court moved to its present site in Cameron Street, almost one hundred years later in 1930.

Although Hobart and Launceston were linked by railway in 1876 the northern city did not have a resident judge until 1918, and even then, not without controversy.

## Early Rumblings

In 1860 a member of the House of Assembly, F J Houghton, tabled a motion asserting that "the appointment of a third judge is necessary and essential to the due administration of justice; and that the said judge should be appointed from the North side of the Island."

Carrel Inglis Clark, in an essay published in the *Critic* on 5 January 1923, notes that no decision was arrived at on the question, "or rather two questions", for the "northern residence aspect of it soon developed into a separate question..."

It was a further twenty six years before the issue was raised again in the Parliament. It was in 1886, in the Legislative Council, during the debate of the *Third Judge Bill*, which ultimately became the *Third Judge Act* of 1887; 50 Vic No 36. At that time there was an attempt in the Council to insert a clause into the Bill that would make it "incumbent upon a judge to attend and preside at Launceston", once a week if required. The amendment was not accepted in the House of Assembly and while the Bill was reserved, it passed into law in 1887, but still without the clause contended for.

On 27 January 1887, there was speculation that former Attorney-General Alfred Dobson was to become the third judge, and had offered to reside in Launceston. Editorial comment in *The Mercury* suggested that the object of appointing a third judge, namely the securing of an impartial third voice on the Full Court, would be defeated if

Dobson were appointed, due to his close relationship with Chief Justice William Lambert Dobson. On 14 March 1887, Justice Adams was appointed.

According to the Parliamentary Papers for that same year, 1887, the Attorney-General was questioned in the House of Assembly as to the bringing in of a Bill to provide for a fourth judge, "as the present arrangement does not fulfil the contemplated advantage to the residents of the Northern parts of the Island." During the same session of parliament the Legislative Council moved that the "North" should have the benefits contemplated by the third judge's appointment.

Clark then describes something of a curious volte-face occurring in the House of Assembly. He wrote:

A northern member, soon to become a minister, Mr Hartnoll, persistently fought for a resident judge at Launceston, and early in the 1888 session moved to make such a residence compulsory, but failed to convince the House by two votes – 11 to 13. However a month later, perhaps moved by pique – who can tell? – declaring it was desirable to "retrench where ever practicable, more especially cases where appointments have been found to be entirely unnecessary," he moved... to repeal the *Third Judge Act* to take effect on the retirement of one of the then three.

Clark returns to these "retrenchment moves" later in his essay, (as edited by Richard Ely), noting:

A southern member who was to be Hartnoll's colleague as Attorney-General (now Sir Neil Elliott Lewis), succeeded [in 1888] in carrying (14 to 9), an amendment that no future appointment should be made to the position of third judge without having first the approval of Parliament. The *Third Judge Act* ever seemed to occupy an unfortunate position, a target for criticism and hostility. The next session a petition, with 91 signatures from Campbell Town, was

presented, "praying that the position of the third judge be abolished", while the session of 1894 produced a pious hope that in the event of the death or retirement of one of the present judges the vacancy shall not be filled. Indeed parliamentary records are eloquently replete, under the guise of retrenchment reform campaigns, of tilts at the judgeship.

### The Northern Push of 1898

In 1898, the year in which there were two vacancies on the Court as the result of the death of Chief Justice Dobson and the retirement of Justice Adams, there was a concerted push from groups of the citizens of Launceston for the appointment of a resident judge.

On 21 April 1898 the *Launceston Examiner* reported that the Premier had received a resolution from the

Secretary of the Launceston Chamber of Commerce, which was unanimously passed by that Chamber, that the "Chamber urges upon Ministers the necessity for the appointment of a resident judge of the Supreme Court in Launceston, and requests them to take early steps in the direction indicated." The Premier was reported as replying that the resolution would be duly considered by his Ministers.

The *Launceston Examiner* of 1 June 1898 reported that a large and influential deputation, consisting of members of the Northern Law Society, City Council, Chamber of Commerce, and other public bodies, waited upon the Premier (Sir Edward Braddon), the previous day to urge upon him the necessity of improved judicial arrangements for the north.

The Premier was reported as saying that the deputation would understand

that the subject was one on which, as a layman, he had to speak with some degree of diffidence, and that they would also understand that seeing how much it depended upon the voice of Parliament, he did not care, and should not properly venture to say, that there should, or should not be a third judge. He could, he said at any rate, say that the matter of giving Launceston an effective judiciary and bringing the city into touch with the Supreme Court of the colony, in a way that would be convenient and suitable, did have his attention, and he had consulted and "thought it could be effected somewhat after the manner of the suggestions" made by the deputation.

The *Mount Lyell Standard and Strahan Gazette* of Saturday 4 June 1898 reported the meeting, somewhat cheekily under the banner "LAUNCESTON TELEGRAMS. NORTHERN JUDGE WANTED", noting that a deputation of the Mayor and Aldermen and prominent citizens had waited on the Premier on the previous Tuesday morning to urge upon him the necessity of a resident Supreme Court judge in that city and that "the Premier gave a most favorable reply".

That year the *Supreme Court Act Repeal Act 1898*; 62 Vic No 25, was passed. It provided that "one of the judges shall attend in Chambers at Launceston at least one day in each week, unless previously notified by the Deputy Sheriff that his attendance is not required; but a judge shall not be obliged to attend at Launceston when his services are necessary in Hobart during Term time or the Sittings of the Supreme Court."

### Twenty Years On

Twenty years later the *Launceston Examiner*, of 28 December 1908, reported that it was understood that one of the conditions attached to the judgeship recently conferred on the Hon Herbert Nicholls was that, "if necessary", he would reside in the north. The editorial comment went on to state that for years an effort had been made to bring about that reform, but some adverse influence has always been at work to block it. The editor wrote:

When the members of the profession in Launceston were interviewed on the subject they were unanimous in their desire that the change should be made. It was pointed out that there were often irritating delays with regard to chamber business which a resident judge would obviate, but the public, have also another claim to this convenience. Owing to this centralisation of so much of the legal work in the capital, northern litigants are put to the extra expense of feeing two members of the profession instead of one. One of the excuses put



### OPENING OF THE NEW SUPREME COURT BUILDING IN CAMERON STREET, LAUNCESTON ON 13 JUNE 1930.

**On Bench:** Mr. Justice Crisp (later Chief Justice and Sir Harold).

**Back Row:** Bates (Resident Caretaker and Messenger); W. M. Bradshaw (Judge's Attendant); Police Constable; unknown; unknown; C.S. Symmons (Judge's Associate); Nat Barnett (Clerk of the Court and Deputy Sheriff).

#### Bar Table:

(From left of photograph) E. G. Miller; unknown; A. "Barney" Banks Smith (Acting Solicitor-General); Wilfred Hutchins (later Mr. Justice); Tasman Shields M.L.C.

**Front Row Spectators:** Dr. F. Rowland Tyson; Frank Tyson; Dr. H. J. Postle; Harold Bushby; unknown.

**Back Row Spectators:** M. D. Weston; unknown.

forward against a northern resident judge was that the Full Court always sat in Hobart, but since the High Court has been established there is less disposition to appeal to the Full Courts of the states. It has been asserted that on the mainland these courts will gradually become of less importance, and that most of the appeals from the decision of a single judge will be taken direct to the High Court. Since this end of the island put forward its claim many years ago there has been a large increase of population in the north. The North-West Coast has opened out, and has become an important part of the island, consequently, while the objections to a northern judge have diminished in force, the arguments in favour of the change have been strengthened. Another matter in connection with the Supreme Court bench which would be the better for some ventilation is why all these judicial appointments should be made among members of the profession in Hobart. Can any satisfactory reason be given why all the members of the judicial bench should be chosen from one centre? Surely there are members of the profession in Launceston, if not elsewhere, fully capable of adorning the bench, and well worthy of the position? We are not in accord with the notion that the members of the bench should be drawn almost entirely from the ranks of prominent politicians. It is a distinct advantage to secure the services occasionally of sound lawyers who have not been drawn into the political whirligig. We do not find the politician so highly favored in the other states as he is in Tasmania, and it would be reasonable if, when the next vacancy occurs on the bench, Ministers would give the members of the profession in Launceston a chance of securing judicial honours.

On 30 January 1909 the *Daily Post* reported that the annual meeting of the Northern Law Society had been held that evening with the President (Mr. Alfred Green), in the chair. The annual report presented and adopted, included the following:

Early in the year, and prior to last annual meeting, a resolution was passed by the society supporting the action of the Southern Law Society in urging the appointment of a third judge. Towards the end of the year steps were taken in the Parliament and by the Cabinet, resulting in the appointment of Mr. Herbert Nicholls to the position. The congratulations of the Society were accorded to Mr. Justice Nicholls on his appointment, which it is hoped will assist in the more speedy disposal of Court work.

The council having for many years

advocated that a judge of the Supreme Court should reside in Launceston have again affirmed that principle, and although no official communication has been received to that effect, it is understood that the Government have decided adversely to the suggestion. Many of the arguments which appear to have been used as difficulties in the way of a resident judge being stationed at Launceston are, in the opinion of the council, untenable.

What in fact had occurred was this. In November 1906, when Inglis Clark Snr appeared unlikely to return to the Bench from illness, a motion was passed in the Legislative Council to the effect that when a vacancy next arose it should not be filled without the approval of Parliament. When the motion reached the House of Assembly the Speaker ruled it to be an impermissible interference with Executive power. However, when Herbert Nicholls was finally appointed at the end of 1908, the Evans Government stipulated that, "if necessary" the appointee should reside in Launceston. The failure to require Nicholls to reside in Launceston explains the lamentations of the Launceston Examiner and the Northern Law Society.

### Justice Ewing, Increased Emoluments and Outrage

It would be another seven years before the *Launceston Daily Telegraph* of 18 October 1917 was able to report that a Supreme Court judge was to be resident in the "North".

The newspaper report claimed that continued growth in Northern Tasmania "of the judicial work for which the services of the judges of the Supreme Court are necessary", had revived the question of the need of a judge resident in that part of the State. The report went on to state that "their Honours of the Supreme Court bench were constantly travelling to and fro, and their visits were becoming more frequent and lengthy". Then came the somewhat wordy dénouement:

The discussion of the subject of one of the judges residing at Launceston in order that the business of the Court may be more conveniently discharged has recently assumed a form indicative of the possibility that an arrangement may shortly be made, if it has not already been completed, by which a judge may take up residence in the Northern city. Rumour in connection with the matter has gone so far as to point to Mr Justice Ewing as likely to become the first judge of the Supreme Court resident in the North.

The *Mercury* of 16 February 1918 reported Mr Justice Ewing had arrived in Launceston to commence duties as

resident judge in the North and that the recent arrangement was that he should continue in residence in the North, and undertake all business at that end of the State for a period of at least twelve months. Given the storm that was to brew later in the year as a result of the suggestion of increased emoluments to be paid to Ewing, it is of interest to here set out the balance of the *The Mercury* report, which included an interview with the judge himself:

Speaking to-day to a "*Mercury*" representative, His Honour said - "I don't see any reason why the arrangement should not continue, provided, of course, the Launceston climate suits Mrs Ewing's health. My intention is to hold practice courts at different intervals in Launceston, also courts for the transaction of all ordinary business, and urgent applications which may be made at any time by appointment with the associate. I have been unable up to the present to get a satisfactory house for residence, but I hope in a few months to secure something suitable. Mr Bates, the court crier, will perform most of his previous duties, and will also act as my attendant. As to an associate I have not yet been able to find a suitable person, but have several names under consideration. When I make up my mind as to who will best fill the position, I will make my recommendations to my brother judges and the Attorney-General. In the meantime, the Registrar (Mr N V Barnett), will do what he can to fill the gap, although, of course, he could not act permanently, as it would interfere too much with his own duties."

The Government have renovated the judge's room in the Supreme Court, and made it quite comfortable as chambers for His Honor. At the same time, they have at least made the Courthouse itself clean and presentable by painting and colouring the walls. Forms are to be placed in that part of the court at present devoted to the general public. Referring to this innovation, Mr Justice Ewing said the Chief Justice (Sir Herbert Nicholls) caused forms to be provided for the Hobart Court in order to prevent over-crowding. The instructions to the officers are not to allow any more people in the court once the forms are filled. This system has been greatly appreciated in Hobart, as it gives a chance of keeping the atmosphere of the court tolerable, which it certainly was not when hundreds of people crowded themselves into the space for the general public hitherto allowed in court. Appliances will also be provided to enable the court housekeeper to keep the grounds presentable. This might have





OPENING OF THE NEW SUPREME COURT BUILDING NEXT DOOR TO STRUAN HOUSE IN CAMERON STREET, LAUNCESTON ON 13 JUNE 1930. STRUAN HOUSE WAS USED AS THE SHERIFF'S OFFICE AND LIBRARY. THE CARETAKER, BATES, LIVED UPSTAIRS. THE ATTENDANT, MR. BRADSHAW, HAD WORKED IN THE SUPREME COURT SINCE 1884. HE WAS KNOWN FOR HIS WARNING: "IT IS NO BUSINESS OF MINE, BUT YOU BETTER BE CAREFUL". THE SUPREME COURT FIRST SAT IN LAUNCESTON IN A WESLEYAN CHAPEL IN 1824. IT MOVED TO A NEW COURTHOUSE IN PATERSON STREET IN 1839, WHERE IT REMAINED UNTIL 1930. THE COAT OF ARMS ABOVE THE BENCH CAME FROM PATERSON STREET, BUT ALL OTHER FITTINGS WERE NEW. STRUAN HOUSE WAS BUILT AS A PRIVATE HOUSE IN 1870. IN 1910 IT BECAME A NURSING HOME AND IN 1922 A PRIVATE HOSPITAL. IN 1929 THE GOVERNMENT PURCHASED IT AND ERECTED THE ADJOINING COURTHOUSE.

**Back Row:** Frank Tyson; Dr.H.J.Postle; Hugh Ritchie; W.F.D.Butler (President of the Southern Law Society); Charles Martin; E.G.Miller; Harold Bushby; Dr.F.Rowland Tyson; M.D.Weston; W.D.Weston.

**Middle Row:** Neil Campbell; O.G.Douglas; R.L.Parker C.M.G. (President of the Northern Law Society); C. S. Symmons (Judge's Associate); R.G.Bingham (representing the Registrar); Nat V. Barnett (Clerk of the Court and Deputy Sheriff); J.B.Waldron; H.C.L.Barber (Deputy Mayor of Launceston); W.M.Bradshaw (Judge's Attendant); Bates (Resident Caretaker and Messenger).

**Front Row:** V.C.Hall; H.S.Baker (Attorney-General); Mr. Justice Crisp (later Chief Justice and Sir Harold); Tasman Shields M.L.C.; G. W. Waterhouse; Wilfred Hutchins (later Mr. Justice); J. E. Heritage; A. "Barney" Banks Smith (Acting Solicitor-General); Claude James, M.H.A. (Chief Secretary).

been carried out by the Government at the request of the judges.

Mr Justice Ewing added "I am bringing the whole of my library (about 2,500 volumes) up to the chambers at the court, so that I will be able to consult authorities and give decisions in Launceston, which judges in the past have been unable to do, owing to the fact that the Government provides no library at all for this court. The number of cases heard locally has substantially increased, as Parliament has passed an Act which for the first time enables divorce cases, equity suits, probate actions, and Admiralty causes to be heard in the North of the Island. All these cases in the past have been taken to Hobart."

Despite the apparent logic of the move, and its overall improvement in the provision of access to justice to the northern Tasmanian population, direct correspondence between Ewing, as the junior puisne judge, and Attorney-General Propsting, as to the payment of an increased emolument to Ewing on condition that he reside permanently in Launceston, was to soon incense Chief Justice Nicholls and Mr Justice Crisp.

On the afternoon of 9 December 1918, Nicholls handed to the press correspondence that had passed between the Attorney-General, himself and Ewing. Given the extent of the apparently deep rift between the members of the Court caused by this issue, the letters repay reading in their original tone. The Mercury of 10 December published them in the following summarised form:

Mr Justice Crisp and I consider that, as the application of one of the judges for an increase of emoluments, on condition that he resides in Launceston, is being brought forward in Parliament, and is becoming a subject of public discussion, it is our duty to see that the opportunity of becoming fully informed about it is given to all who wish to form a sound opinion, in the interest of the State, upon the matters involved. We believe that such of the correspondence as we now hand to the press will allow the information necessary for the discussion of the present proposals

In supplying the correspondence, the Chief Justice and Mr Justice Crisp made the following pronouncement: "We wish to say that we have done our best to guard, and so far have faithfully guarded, the rules which are rightly considered essential for preserving the independence, integrity and real dignity of British courts of law, and that, now that

matters are going out of our hands into Parliament the maintenance of those principles is in the hands primarily, of members of Parliament, subject to certain constitutional limitations which may operate; and ultimately of the electors who are in effect the sovereign power of the State. We believe that such of the correspondence which we now hand to the press will afford all the information necessary for the discussion of the present proposals."

The first letter handed to the press was dated October 22, 1917 and was to the Chief Justice from the Attorney-General (Hon W B Propsting CMG) intimating that Mr Justice Ewing had informed him that he proposed to live in or near Launceston, and stating that the Government had no objection provided that the judges could carry out the judicial work of the State without inconvenience to the public and without any increased cost beyond that mentioned in the Attorney-General's letter to Mr Justice Ewing.

On the same date the Attorney-General wrote to Mr Justice Ewing replying to previous letters and conversations as to his proposal to live in Launceston, and expressing the Government's willingness, provided no inconvenience would be caused. If the judges found an arrangement practicable, the Government would defray the cost of the removal of books and the fitting up of a room as a library at the court-house at Launceston. One of the clerks in the public service might act as an associate.

On October 29 1917, the Chief Justice replied to the Attorney-General. He prefaced his remarks by correcting the statement published in the press to the effect that the Premier had said "Ministers had been consulting with the judges for some time on the matter", and said that the Premier had obviously been misunderstood, as no such consultation had taken place. He objected to the impression being created by such a statement that the bench was to be split up and the judges separated, when at least two of the judges held strongly the view that the only proper way in which the country could be given the full value of what knowledge the judges possessed was, by the judges living in one place, practically in permanent consultation. Mr Justice Ewing desired to reside in Launceston for the benefit of the health of one of his family, so that the proposed alteration was not for the benefit of the judicial work, but was for purely private reasons.

The views of the Chief Justice and Mr Justice Crisp were summarised as follows: - "(1) That the way to get the best work from all the judges was for them to live in one place, (2) That there is no real advantage to the north in one judge living there, thus cutting that put of the State off from the majority of the court, and that there are obvious disadvantages, (3) That all this is subject to the fact that if a judge does his work at the proper place he is at liberty to make his home where he pleases except, perhaps, in the case of the Chief Justice, who should be near the capital, (4) That the question of the judge residing permanently in the North is not at present raised, but if it should be raised, a very important aspect of it will be whether Devonport would not serve the purposes of the northern population best.

Mr Justice Ewing went to reside at Launceston and that was the end of the correspondence at that time, but nearly a year later, under date October 8 last, the Attorney-General, in a letter to the Chief Justice said that Mr Justice Ewing was prepared to reside in the vicinity of Launceston for at least five years provided certain allowances were made to him. Their Honours were asked if they were agreeable – from the point of view of the judicial work – to one of the judges residing permanently at or near Launceston, in view of the fact that the change had been given a 12 months' trial. Cabinet was quite agreeable to make any reasonable and necessary proposals to Parliament to secure to the Northern portion of the State a resident Supreme Court judge, if such a change would result in any sort of real public advantage.

Three days later, in reply to the Attorney-General, the Chief Justice directed attention to the fact that the junior puisne judge had been communicating with Ministers upon matters affecting the administration of justice by the Supreme Court, while he (the Chief Justice) had actually known nothing of what had been going on until informed by the Attorney-General. He requested that all correspondence between the Government and judges be by the Attorney-General through the Chief Justice, and said that if that course had been followed Mr Justice Ewing's proposal to Ministers would never have needed consideration because the Chief Justice and Mr Justice Crisp would not have agreed to their being made.

During the last two years the junior puisne judge, by means, so far as the Chief Justice knew, of private negotiations with some members of



the Ministry, had made more than one proposal by which his salary was to be substantially increased. As he (Sir Herbert) telegraphed to the Premier from Swansea when he heard of the first of these arrangements in February 1917, it was a breach of the rules which were supposed to govern the conduct of the judges and of the Crown in dealing with the judges. The junior puisne judge was seeking an arrangement to obtain an increase in pay or allowances of £250 a year. Any such increase, unless by Act of Parliament, would, in the Chief Justice's opinion, be illegal.

His Honor then went on to give his reasons against such proposal, instancing a libel brought by the Premier, with the fate of the Ministry depending upon the verdict, and the case being tried by a judge, whose hope of a large increase of pay depended upon the fate of the Ministry. The securities for the due exercise of the judicial office were stated to be: - (1) The non-interference of the Crown, (2) the judge's oath, (3) their almost unassailable tenure of office, (4) their fixed and safe emoluments.

With regard to the question of a judge residing in Launceston, the Chief Justice and Mr Justice Crisp were still of opinion that it was a mistake. What had happened this year strengthened their views. There was no economy to suitors in it. All work which should be done in Launceston had been done there for some years. It was important that allegations as to the advantage to litigants of a judge residing in Launceston should be investigated down to small details.

A fortnight later Mr Justice Ewing wrote to the Attorney-General in reply to the above comments made by the Chief Justice, stating that it was the first time that the Chief Justice had made any suggestion to him that all communications should be made through him (the Chief Justice), although he (the Chief Justice), had been well aware that on various occasions he, (Mr Justice Ewing), had communicated with the Attorney-General on the subject of judicial work. The statement that Mr Justice Ewing had on more than one occasion proposed that his salary should be substantially increased was not true as he had never suggested to the Government any increase in salary for any work that he was prepared to undertake on behalf of the community. All he had asked was that a sum should be provided which would meet the additional expense of such work to him. He agreed that emoluments should only be granted

by Parliament. He resented the tone of the Chief Justice on that aspect of the question. As to the public convenience of the presence of a judge in the North a little investigation would show that it had very great advantages, and saved litigants a good deal of money. There was no prohibition against a judge residing in Launceston, and the residence in Launceston was a much more effectual carrying out of the intention of the Act than a judge with his attendant travelling backwards and forwards to Launceston. When it was considered that criminal sittings had to be held in Launceston as well as civil sittings, local court sittings and sittings along the North-West Coast, the carrying out of them would involve one judge travelling a large portion of his time, and he thought the expense would be very much greater than that involved by Parliament making an allowance to meet the out-of-pocket expenses of the judge.

On October 28 last the Chief Justice, in a communication to the Attorney-General, replied to the statement contained in Mr Justice Ewing's letter. It now appeared to be recognised, he said, that matters, affecting the administration were to be discussed between the Government and the judges through the Attorney-General and the Chief Justice, and as it now appeared to be agreed that any increase in the emoluments allowances, etc. of a judge was one of those matters affecting the administration of justice there was probably no reason for the judges troubling the Attorney-General with any further correspondence. As to the question of a judge residing in the North, there did not appear to be any fresh point raised. In conclusion, the Chief Justice added that even now, though the war had temporarily lessened the volume of work in the courts owing to the impossibility of specialisation, due to our many jurisdictions, to our annual mass of new statutes, and to the necessity of keeping up with Commonwealth case and statute law and English decisions, there were few hours in the day when a judge need not be thinking of something relating to his actual work, or to keeping himself prepared for it. None of the judges had any need for other employment.

As might have been expected, the action of Nicholls and Crisp in handing this correspondence to the press was met with indignation from the Northern newspapers.

The *Daily Telegraph* responded the following day, 11 December 1918, claiming that Ewing had "convincingly

demonstrated" not only the public utility of a resident judge in the North, "but also the long denied practicability of carrying on the work of the Supreme Court with one of the judges resident in the North".

The report asserted that the apparent object of the unusual procedure resorted to by Nicholls in releasing the correspondence was that of influencing Parliament against voting an additional £250 a year for a Northern resident judge. The reporter went on to say that one reference in the summary of views of the opposing judges was "directly suggestive of a wily politician to the old and familiar Southern practice of playing off one part of the State against the other". In a final rattling of the sabre the article concluded that, "Northern people should be prepared to take whatever action may be necessary to prevent the removal of the benefit of which they had only just begun to acquire practical experience."

The *Launceston Examiner* of the same date, while generally endorsing the remarks of Nicholls and Crisp respecting the question of the method of providing for allowances to judges, could not accept their contentions about a resident northern judge, as being in any way conclusive. The *Examiner* suggested that "the safest way out of the difficulty" was for the Government to place a sum in the estimates as "house allowance" for a northern resident judge, and leave it to the members of the Court to say which member shall occupy that position. The article concluded that the advantages of Mr Justice Ewing's stay in the North were too obvious to be lightly set aside, and that "the objections raised by the Chief Justice are of little importance as compared to the benefits which the presence of a resident Northern Judge confers on the public."

After Ewing's death on 19 July 1928, things reverted to the position existing before his move to Launceston. On 13 June 1930 Mr Justice Crisp, later Chief Justice, and Sir Harold, opened the new and still existing Supreme Court building in Cameron Street. Two years later, on 1 July 1932 the *Launceston Examiner*, under the headline "Resident Judge: Launceston Claims Important Problems", lamented that since Ewing's death the two judges, Mr Justice Crisp and Mr Justice Inglis Clark Jnr, and the Chief Justice, Sir Herbert Nicholls, "have resided in Hobart. Launceston has been visited from time to time as occasion demanded by one of the judges for the purpose of holding courts."

Although Justice Richard Kenneth (Ken) Green, was a Launceston resident and maintained a residence there in Brisbane Street where he lived with his brother, it seems that it was not until

the appointment to the Court of the then pre-eminent Launceston barrister, George Hunter Crawford, that a judge spent more time in Launceston than in Hobart.

It is not altogether clear how much judicial time Sir Kenneth, as he became, devoted to Launceston but it would seem, at least during the period 1958 until his untimely death in 1961, he and Justice Crawford undertook the same circuits as all other judges. After Sir Ken's death Justice Crawford spent more time in Launceston where he and his family maintained their principle residence and he spent less judicial time in Hobart. Of the eight Court sittings a year he would only undertake one civil and one criminal sittings in Hobart and one in Burnie.

After the retirement from the Bench in December 1981 of Sir George Crawford, as he had become, there would be a further hiatus, until the appointment to the Court of Sir George's son, Ewan Charles Crawford, in September

1988. Crawford Jnr, later Chief Justice Crawford, was a resident Launceston judge until his retirement in April 2013. He was the only judge ever to have administered the Court from Launceston as Chief Justice. On 24 April 2008, at a ceremonial sitting of the Court to mark his appointment as Chief Justice, Crawford Jnr humorously said:

There is one possible change that I should mention to you now. The Premier has supported my proposal, having regard to my place of residence, that the Principal Registry of the Court should move to Launceston. The only condition he has put on the move, in the interests of balancing the rights of all Tasmanians to share the benefits of government decisions, is that the Hawthorn Football Club should move its base from Aurora Stadium to the Bellerive Oval. I have informed the Premier that I have no difficulty with that, given my support for the Sydney

Swans. However, realistically, I think it is unlikely that a further announcement about a move north will be made in the future.

Since 11 June 2013 Justice Robert Pearce has similarly been a resident Launceston judge, sitting five out of the eight sittings in Launceston. In July 2017, when Justice Michael Brett was appointed to the Court, he also chose to continue his principle place of residence in Launceston, thus giving "the North" two judges living and working in that part of "the Island". Justice Brett however, has continued to undertake regular circuits along with the "Southern" judges.

**THE HONOURABLE JUSTICE STEPHEN ESTCOURT QC**  
Judge  
Supreme Court of Tasmania



## SUPPORT CHILDHOOD CANCER RESEARCH

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Australia has one of the highest incidences of childhood cancer worldwide. One in 500 Australian children will develop a cancer before 15 years of age – that's 600 Australian children diagnosed every year.

If you or your clients are looking to include a children's cancer charity in your will making process, please consider the Children's Leukaemia & Cancer Research Foundation (Inc.). We have been funding childhood cancer research for over 30 years in Australia and are 100% community funded.

**To leave a bequest or make a donation to CLCRF, contact us today!**

*Make a difference to young lives*



**08 9363 7400**



**childcancerresearch.com.au**



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