

Sketches on Territory Legal History

by the Hon. Justice Mildren

WILLIAM JAMES VILLENEUVE SMITH – *Lawyer Extraordinaire*

Unquestionably the most amazing lawyer ever to practice in the Territory, William James Villeneuve Smith was as eccentric as he was able. Born in England in 1824 his family immigrated to Tasmania in 1826. "Villeneuve" was his mother's maiden name; she was a daughter of the French Admiral Villeneuve defeated by Nelson at the Battle of Trafalgar. He and his brother Francis, (later to become Premier and Chief Justice of Tasmania¹) were both sent to London to further their education. Francis studied law at the University of London and was called to the bar of the Middle Temple in 1842 before returning to Tasmania. William studied medicine at the University College London, but apparently did not graduate. He returned to Australia, married his first wife Flora Fenton by whom he had two sons (Villeneuve Francis and William James Knox) and took up sheep grazing in Tasmania and Victoria. Subsequently he returned to London, where he was called to the bar at the Middle Temple in 1857². After admission in Victoria, and later in South Australia in 1871, he moved to Palmerston arriving probably at some time in 1873. Even before setting foot on dry land he had an immediate impact. The steward of the vessel on which he arrived told the passengers they had had their last meal on board. Smith retorted that under the *Passengers' Act* they were entitled to be kept for another 48 hours—and they were. Lockwood observes that "among the new arrivals, his name was made and on that first day he had made it among the old residents by having £60 worth of spirits returned to John Edwards, whom the police had summonsed for selling spirits illegally."³

Smith was to become actively involved in stirring up trouble for the

administration over the mess created by the government's handling of mining claims and disputes. In October 1873 the government sent north an experienced politician, George Byng Scott, to take over as Government Resident after Capt. Douglas had abandoned the position to go to the goldfields. On his arrival, Smith read an address of welcome to Scott, expressing the hope that the was "clothed with ample powers to remedy the many evils attendant on a community so remote from the seat of government."⁴ Lockwood observes:

"If Scott had failed to listen attentively to the greeting he could scarcely be blamed. Villeneuve Smith, the town's only barrister, and a gentleman of very swarthy complexion, read the address while clothed in a gaudy pair of pyjamas with a white jacket over them. He wore a pith helmet and his assistant held an umbrella over him. Scott believed he must be a son of the Sultan of Borneo"⁵

Smith loved publicity and did whatever was necessary to get it, no matter how outrageous and shocking this might be. His favorite ploy was to take a leading role in some popular cause in which he could champion the common man against the establishment, at the same time using the opportunity to defame prominent figures by publicly asserting some outrageous conduct which he claimed to have on "good authority" (but which he himself did not believe) and which he published so as to give the persons concerned the opportunity to publicly refute it. In January 1874 he made a long speech in the Warden's Court "denouncing the Ministry for baseness and corruption"⁶ over the supposed closure of that Court after a telegram had been sent to the Chief Warden from the government in Adelaide.⁷ He followed this up at a public meeting when he alleged that the Special Magistrate, Dr Ellison, had received a telegram from the govern-

ment instructing "him to decide certain appeals in a certain way". On the 19th January 1874, whilst appearing in the Local Court, when Dr Ellison called upon him to explain himself Smith said he had the information on "good authority" from a source he refused to name, that he proposed to ask him about it in open court "in order that the Special Magistrate might have an opportunity of contradicting the statement", although he was "quite certain" that even if he had received such a telegram "that the Special Magistrate would not be in the slightest degree influenced by it". Dr Ellison reprimanded him for not "having taken precaution to enquire into its truth. For it is a deliberate falsehood."⁸

In February 1874, Smith's behavior in court was such that he was threatened with committal for contempt.⁹ In March 1874, the editor of the *Northern Territory Times* described his behavior at public meetings as

"...grotesque buffoonery...the people of this settlement will not much longer allow their meetings to be disgraced by low blackguardism... It is because Mr Smith's speeches are of a gross and libellous nature that, we decline to give them any prominence in our columns...he cannot open his mouth without slandering someone..."¹⁰

Not concerned by this castigation, in July 1874 at a public meeting he threatened the new Warden at Sandy Creek, that should he try to interfere with the rights of miners, he would be put into a hole and tarred and feathered, and that if the police interfered, there would be armed resistance! He also accused Scott and the new Special Magistrate Edward Price with "being offered and promised a good fat share of all the claims they were wanting to protect. It was stated that Mr McMinn¹¹ and others were offering this; but he could not believe it himself".¹²

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Smith's comments evoked an advertisement in the *Northern Territory Times* signed by many prominent citizens describing his remarks as "disgraceful and beneath the contempt of any respectable person."¹³ McMinn responded by calling the allegations "the offspring during excitement of Mr Smith's fertile brain".¹⁴ Smith replied, alleging that the signatures to the advertisements were either forged or obtained by misrepresentation, and accused Scott of not being independent, but acting in aid of his friends or himself.¹⁵

Efforts to deal with Smith were largely unsuccessful. In May 1874 Smith was twice charged with using insulting words in a public place. On one charge he was found guilty and fined but the other was dismissed.¹⁶

Notwithstanding his behavior, (and the fact that the town had two other lawyers) Smith's practice was booming, and he took every opportunity to make life difficult for the courts. In August 1874 after losing a case in the Local Court, presided over by Price SM and two JPs, he told the Court that one of the JPs "was never known to have an opinion different from the Special Magistrate, and that the other Justice never agreed excepting on the wrong side." The *Northern Territory Times* observed:

These remarks led to some altercations of the usual offensive kind which the Court cut short by an adjournment¹⁷

On the following day Smith was called upon by the Court to withdraw his remarks

"...but this was not done until a great deal of recriminatory conversation had been indulged in, to the amusement of the bystanders and to the injury of all who are concerned in the proper administration of justice."¹⁸

Smith's parting fight with the Courts concerned the issue of civil

juries. In August 1874, whilst appearing for the defendant in a Local Court case, *Skelton v Caldwell*, he told the Court that his client would not appear unless and until a jury was empaneled. The *Local Courts Act* provided for a jury of four, but the Court ruled against Smith because no jury list was available, as there was no jury district in Palmerston. Smith managed to get the case adjourned so that this could be attended to. When the case eventually came on for trial in April 1875, Smith succeeded in obtaining a jury; but after the plaintiff's case had closed, he succeeded in having the plaintiff non-suited;¹⁹ nevertheless civil juries were thereafter to become common in the Local Court for the next 50 years.²⁰

Obviously someone so colourful had his friends and admirers, and when he left Palmerston in June 1875 to return to Adelaide so that his sons could take up law, he was given a farewell dinner which was well attended.²¹ No sooner had he returned than he resumed his old tactics of libelling important figures, by repeating gossip, (which he himself did not believe) so that those libelled could clear their good names. This time the allegation was that Henry Downer, a Commissioner of Insolvency and Local Court Magistrate, was

"...frequently influenced in his decisions in the Local Court and in another court over which he presides by feelings of nepotism rather than the law...or the merits of the case".

This allegation was published as a letter in *The Advertiser* on 8 May 1876 (under the hand of "V") and was followed by a second letter shortly afterwards in which he insinuated that Downer SM had an arrangement with his brothers, (George and Henry Downer who were both lawyers), to indirectly share in the profits of their practice. The Attorney-General, in May 1876, moved for a rule *nisi* to

show cause why *The Advertiser* and Smith should not be prosecuted for criminal libel, which the Full Court made absolute. He was eventually tried, found guilty, fined £100 and sentenced to imprisonment for 6 months: see *R v Smith* (1876) 10 SALR 213.²² However, as a "first class misdemeanant" Smith got certain privileges whilst in gaol, and the gaoler allowed him to use the condemned cell, which was the biggest and best in the building, to have his meals brought to him from the Newmarket Hotel, to carpet the cell and build bookshelves on the walls, and have his clients ferried from his office in Wymouth Street to the gaol to see him each morning to transact their business. He was not suspended or disbarred, and in fact was released by the Governor after having served only 2 months, upon the presentation of a petition signed by over 7,000 members of the public, including signatures by 12 MPs, and a number of magistrates and other prominent citizens.²³

Eventually the tide of public opinion turned against him. In 1877 he stood for Parliament in the seat of East Torrens. During the course of the campaign a Victorian newspaper ran an article about Smith's alleged life of "profligacy, treachery and brutality" details of which had been given a public airing during his divorce in Victoria in 1873, and he lost the election. By this time, he was living in a defacto relationship with Mary Dwyer, to whom he fathered 3 children, including Francis William Villeneuve Smith, in 1884. He and Mary were eventually married in 1899. He died in 1902, as the result of a horse-tram accident.

Photographs of Smith taken in later life show him wearing a monocle, moustache and goatee beard, and cutting a dashing "devil may care" and rakish figure. He shares with John A.H. Evatt the rare distinction of fathering two Senior Counsel.²⁴

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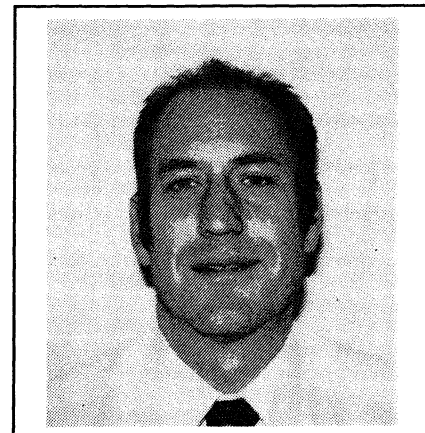
New Appointments

Appointment of Registrar of the Family Court

Mr Stewart Brown has been appointed to the position of Registrar of the Family Court at its Darwin Registry. He commenced his duties with the Court on the 31st August 1998.

Registrar Brown was previously employed by the Northern Territory Legal Aid Commission in Darwin and practised primarily within the Family Law jurisdiction. There exists therefore the potential for matters to be listed before him in which he has had some involvement with one of the parties prior to his appointment.

In such cases it may be that the parties will wish that their matter not come before Registrar Brown. The Court is anxious to avoid embarrassment to all concerned and will endeavour to make alternative arrangements for the listing of matters in appropriate cases. As you will appreciate such arrangements pose considerable logistic difficulties for the Court and as such it would be appreciated if as much notice as possible could be given in relation to any situations where it would be sought to make special listing arrangements.



Mr Stewart Brown, Registrar of the Family Court

Appointment of Deputy Chief Magistrate

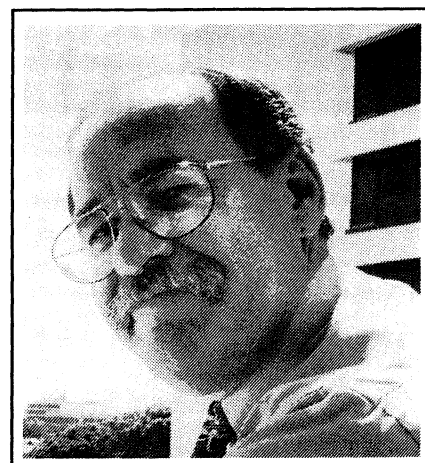
Mr Warren Donald, Magistrate Chambers, Alice Springs, has been appointed as a Deputy Chief Magistrate by the Acting Administrator of the Northern Territory.

The appointment was effective from 31 August 1998, for the period that Mr Donald is located at Alice Springs.

The appointment of a Deputy Chief Magistrate at Alice Springs will enhance the status of the magistracy in the region. It is anticipated that Mr Donald will represent the Chief Magistrate at various meetings and functions and carry out relief duties as required. He will be responsible for allocating

the workload of the magistrates, and will assist the Chief Magistrate with administrative matters at Alice Springs.

Mr Donald was appointed to the Territory magistracy in July 1995, following lengthy experience as a legal practitioner in New South Wales and the Australian Capital Territory. A member of the Northern Territory Police Force from 1973 to 1978, Mr Donald completed his tertiary education in Sydney, and gained an Honours degree in law from the Australian National University in 1983.



Mr Warren Donald, Deputy Chief Magistrate

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¹ See J.M. Bennett, *The Legal Career of Sir Francis Smith* (1975) 49 ALJ 451.

² H. Whittington, *Mr Villeneuve Smith Senior's First Years in South Australia*, Law Society Bulletin (SA) Vol 8, No 10, (Nov 1986).

³ Douglas Lockwood, *The Front Door*, Rigby Ltd., (1968) pp48-9.

⁴ *Ib.*, p45.

⁵ *Ib.*

⁶ NT Times, 16/1/1874.

⁷ see Justice Mildren, *Chief Warden M.L. Connor*, to be published in *Balance* 1988, for further details.

⁸ NT Times, 23/1/1974

⁹ NT Times, 9/2/1874

¹⁰ NT Times, 27/3/1874

¹¹ Acting Government Resident, 1883-84

¹² NT Times, 24/7/1874

¹³ NT Times, 24/7/1874

¹⁴ NT Times, 15/8/1874

¹⁵ *Ibid.*

¹⁶ NT Times, 8/5/1874

¹⁷ NT Times, 15/8/1874

¹⁸ *Ibid.*

¹⁹ NT Times, 10/4/1874

²⁰ They were abolished by the *Local Courts Ordinance* 1933.

²¹ NT Times, 26/6/1875

²² An appeal to the Privy Council was unsuccessful (1876) 10 SALR 248. For an interesting account of the proceedings at trial, see H. Whittington, footnote 2, *supra*.

²³ H. Whittington, *supra*.

²⁴ William Villeneuve Smith took silk in Western Australia. Francis (Frank) Villeneuve Smith took silk in South Australia, and was at one time President of the Law Council of Australia. For more about Frank Villeneuve Smith, see *Australian Dictionary of Biography*, (1891-1939) pp 642-643.