

THE
STATE REPORTS

SOUTH AUSTRALIA

1961

EDITED BY
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A PRACTITIONER OF THE SUPREME COURT OF SOUTH AUSTRALIA.

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JUDGES OF THE SUPREME COURT

THE HONOURABLE SIR JOHN MELLIS NAPIER, K.C.M.G.
CHIEF JUSTICE.

THE HONOURABLE SIR HERBERT MAYO.

THE HONOURABLE SIR GEOFFREY SANDFORD REED.

THE HONOURABLE DUDLEY BRUCE ROSS.

THE HONOURABLE REGINALD RODERICK ST. CLAIR
CHAMBERLAIN.

*THE HONOURABLE JAMES FRANCIS BRAZEL.

†THE HONOURABLE VIVIAN RHODES MILLHOUSE.

ATTORNEY-GENERAL

THE HONOURABLE COLIN DAVIES ROWE, M.L.C.

* Died, 23rd August, 1961.

† Appointed, 26th October, 1961.

MEMORANDA

I.

A special sitting of the Full Court (*Napier, C.J., Mayo, Reed, Ross and Chamberlain JJ.*) was held on Monday, 28th August, 1961, following the death of the Honourable Mr. Justice Brazel on 23rd August, 1961.

HIS HONOUR THE CHIEF JUSTICE (Sir Mellis Napier):—This special sitting of the Court has been appointed to afford an opportunity to the Court and to the profession of the law to pay a tribute of respect to the late Mr. Justice Brazel, and to express the grief that we all feel with respect to his untimely end. From the very beginning Mr. Justice Brazel was marked out for distinction. At the University he graduated at the age of twenty, and had to wait for his admission to the Bar. That is not unique, but it was indicative of the qualities which afterwards made themselves manifest in his life. As a junior he early attracted the attention of his contemporaries and likewise of the Court. His work was mainly in the line of what would formerly have been styled common law—issues of fact and the like—but beyond that he had already displayed qualities which marked him out as qualified for a seat on this Bench, and when he took silk these qualities became even more obvious and manifest. In that capacity his work was indicative of the very best traditions of his profession and of this Court. As a Judge it was all too soon for him to have shown the full measure of his ability, but that was evident in the work that he was doing. His untimely end is a grave loss to the profession of the law and to the State, and it is a grievous loss to the friends whom he has left behind. Our sympathy is extended to his family in their bereavement. I speak for the Court and the officers of the Court—we feel that we have lost a good and valued friend, a friend, I think, to every member of the profession. It is useless to repine. These things must be, but our sympathy goes out to those whom he has left.

THE HONOURABLE THE ATTORNEY-GENERAL (The Hon. C. D. Rowe):—May it please your Honours: A little over twenty months ago we gathered here on the occasion of the presentation by the late Mr. Justice Brazel of his commission appointing him as a Judge of this Honourable Court. We expressed to him our united and our sincere congratulations. We assured him of the loyalty and the respect which the Bench is always entitled to receive from the Bar; we expressed the belief that the confidence which had been reposed in him would not be misplaced; and finally we wished him a distinguished and a long career in his high office. All these hopes and good wishes, except the last, have been fulfilled. A Higher Hand than ours has intervened and has called him to a richer and more fuller life. All too soon, it seems to us through our darkened eyes, we are again assembled here to pay tribute to his memory, and to place on record the worth of his work and the fact that he fulfilled our highest anticipations and our most fervent hopes in the discharge of the duties of his high office.

To come to a Court held high in the esteem of the people, with a great tradition for the maintenance of those things which go with the efficient and impartial administration of justice, to win the immediate confidence of his brother Judges and of the profession alike, to settle down to the work of the Court with quiet and certain confidence, and to add to its lustre, and all this in a few short months, is an achievement which is deserving of the highest praise. Such was the record of the late Mr. Justice Brazel, and such is the record to which we pay tribute on this occasion.

Many of us were privileged to count him as one of our friends, and not infrequently to be given the benefit of his wisdom and his knowledge. We all feel we have lost something that will not easily be replaced, and we will go about our work with a sense of deep gratitude for a life which it was a privilege to know and an honour to share. If his loss means so much to us who knew him, as it were, on the fringes of his life, how much more deeply and severely must that loss be felt by those nearest and dearest to him and to whom he was the centre and soul of their thought and their life. It is not given to all men to make an outstanding success of their public as well as their private lives, but Mr. Justice Brazel excelled in both these fields, and, whilst we pay our tribute to his public career, we would be failing in our duty if we did not express our acknowledgment of his sympathy and understanding as a husband and as a father. We express to his widow and to his children our sincerest sympathy in their sad and sudden loss, and we can only hope that the knowledge that he enjoyed the respect and esteem of all who knew him will be some comfort to them at this difficult time.

The Bench and the Bar have lost one of their most distinguished members at a time when we looked forward to many years of distinguished service from him. We can only hope that the memory of his life and the force of his example will inspire us all to emulate the standard which he set.

MR. D. S. HOGARTH, Q.C. (President of the Law Society of South Australia):—May it please the Court: I rise with an emotion of great sadness to pay tribute to the late Mr. Justice Brazel. I speak on behalf of the members of the Law Society of South Australia, and, I am sure, of all members of the legal profession in this State, when I say I wish to associate myself with all that has just been said by Your Honour the Chief Justice and by the Honourable the Attorney-General. With the passing of Mr. Justice Brazel we have lost one whom we loved and respected, both when he was at the Bar and later after his elevation to the Bench. One learns to gauge a man's real character when one meets him as an adversary over the years, and in that capacity we learned to know his Honour as a skilled and fearless fighter on behalf of his clients, and one who fought cleanly and fairly, and in the highest traditions of the Bar. As a member of the Bar he was always available to give advice to the younger members who so often need it, and I myself have gone to him for personal advice and received it with the friendliness

and helpfulness which we learned to expect from him. As a Judge, in the tragically short time since he took his seat on the Bench, we had already learned to know him as one always quick to seize upon the salient point, and always one whose ready understanding and wise advice was likely to bring about a reconciliation between opposing parties. His career on the Bench was one to which we looked forward with the greatest confidence, and we are grieved indeed that that career has been cut short. We have lost an able Judge and a valued friend.

We extend to the Members of the Court our sympathy on their loss of a loved colleague. We extend to Mrs. Brazel and to other members of the family of the late Mr. Justice Brazel our very deep sympathy; I think I may add that we share to some slight extent the loss they have suffered.

II.

A special sitting of the Full Court (*Napier C.J., Mayo, Reed, Ross, Chamberlain and Millhouse JJ.*) was held on Thursday, 30th November, 1961, to bid farewell to the Honourable Mr. Justice Ross on his retirement.

HIS HONOUR THE CHIEF JUSTICE (Sir Mellis Napier):—I will ask Mr. Justice *Mayo* to speak on behalf of the Court.

HIS HONOUR MR. JUSTICE MAYO:—Mr. Attorney-General, Mr. *Bright*, and members of the legal profession: We are assembled today to bid an affectionate farewell to a very distinguished member of the Bench, who has long been actively associated with the practice of the law in this State. By direction of the Honourable the Chief Justice, I speak on this occasion for him, for the other colleagues of Mr. Justice Ross, including myself, and indeed for all those who have been privileged to work in these Courts with our brother and to observe his performance of duty in whatever capacity we have acted.

I think it probable that I became aware of the existence of my brother Ross before any other person present in this Court today, as my memory of him dates back to the 'nineties when he was well under the age of ten years, and, as I seem to remember, was very well behaved in the presence of his maternal grandmother.

Mr. Attorney and Mr. *Bright* will speak by virtue of their respective offices, I understand. Mr. Attorney will speak for the Government and for the people of this State, as well as in his capacity as leader of the profession. Mr. *Bright* will be able to speak on behalf of the Law Society and its members.

From his father, Bruce Ross has inherited qualities of a true Scot. As to that, the legal profession in this State is greatly indebted to Scotland and her sons for the qualities of many of our scions.

But our brother also has had the benefit of genes derived from the other side of the Irish sea. The O'Halloran family, of which his mother was a member, were closely associated with the administration of the law from the earliest days, even in the 1840's. Major T. S. O'Halloran

was Commissioner of Police, and also a member of the Legislative Council.

The grandfather of Mr. Justice Ross, namely, T. J. S. O'Halloran, presided over Courts. I had the pleasure of appearing before him in the long ago.

Many of those present will remember the distinguished silk, Tom O'Halloran, who was for years President of the Law Society, and with whom our brother became a partner.

Mr. Justice Ross has been very active in every arena in which law is practised. In his early days he attended good schools, as well as our University. He was admitted to practice in his early twenties. In the course of his career he has appeared before every Court. He certainly made his mark. Even at an early date his worth was well recognised. In due course he became a member of the group that have the responsibility of examining articled clerks before their admission. The Statutory Committee had the advantage of his services. Inevitably, he took silk, and not very long afterwards he became a Judge of this Court.

There were other activities connected with the law. He was a prominent member of our Law Society and became its President. In addition, he was made Vice-President of the Law Council of Australia. But he has not restricted his attention to the legal sphere. For many years he has been Chancellor of the Dioceses both of Adelaide and of Willochra, and still is. He is an official of St. Peter's Cathedral, was a member of the Board of Governors of his old college, and President of the Old Collegians' Association, and, in another venue, President of the Church of England Boys' Home.

In the First World War he was a member of the A.I.F.

He has been a sporting enthusiast, as witness his doings in football, golf, bowls and I must not overlook cricket. I read in the column of "Fifty Years Ago" recently how he secured six wickets of the opposing side for a very small total of runs.

Let me return to the law. You all will have no doubt that interest in the law is in his blood. Indeed, it has been passed on to his son.

It will be a pleasure this morning to listen to the encomiums passed on Mr. Justice Ross by the other speakers. The affection and esteem we all have for him require no further elaboration by me. He has always carried out his duties with the greatest care and attention. He has demonstrated at all times that he has the qualities—the integrity—required to inspire the confidence of the community in Courts. To him we express a very sincere appreciation of his work. We compliment him on his attention to duty. We will all be able to look back on his work in the Courts with admiration and pleasure. And finally we join in wishing him all the joy and satisfaction that the future can hold—both to him and his wife.

THE HONOURABLE THE ATTORNEY-GENERAL (The Hon. C. D. Rowe):—
May it please Your Honours: It is with regret that we realise that the time has come, Mr. Justice Ross, for you to retire from the Bench of

this Honourable Court, and we would not let the occasion pass without expressing to you our very sincere appreciation of the worth of your work and of the high esteem in which you are held, not only by the legal profession and by the Government, but by all those whose pleasure it has been to know you.

Yours has been a distinguished career. Admitted to the Bar in 1914, appointed Queen's Counsel in 1945, and to the Bench of this Honourable Court in 1953, you have given a lifetime of service to the Bench and at the Bar. Your service as President of the Law Society of South Australia from 1947 to 1959 and as Vice-President of the Law Council of Australia in 1948-1949 will always be remembered.

You have realised that there are duties which devolve upon a man in public life, a responsibility of using his talents and abilities as far as he can for the service and benefit of his fellow men, and in the discharge of that responsibility you have been very successful. Many people who have experienced your help and assistance have happy memories of it.

Apart from service in World War I in the A.I.F., you have been, as has been mentioned, associated with your old college, St. Peter's College, both with the Council of Governors, and also with the Old Scholars' Association. In many other spheres your services have been freely available to the community; those services have been given unostentatiously and voluntarily, and have been of a very high order, and have deserved and received the plaudits of all who have benefited from them.

But we speak this morning particularly in respect of your work as a Judge of this Honourable Court. In that capacity you have brought painstaking effort and a clear and judicial mind to your work, and have at all times discharged the duties of your high office with credit to yourself, and with satisfaction to those who appeared before you. Above all, you have maintained a quiet and even temperament, which has remained unruffled amongst the stresses and strains of your work, and, by so doing, have upheld the very great dignity and very high traditions of this Court, and have carved for yourself a place in its history that will not soon be forgotten.

We thank you for the service you have rendered. We wish to you and to Mrs. Ross long life and happiness in future years, and we wish you to know that the good wishes of all assembled here and of your many friends in various walks of life go with you as you lay aside the robes of office.

MR. C. H. BRIGHT, Q.C. (President of the Law Society of South Australia):—May it please Your Honours, and in particular Your Honour Mr. Justice Ross: So great was the affection and the regard in which I have known that your Honour is held by the whole profession, that I did not care to speak unaided today, and I accordingly caused the subject matter of your Honour's retirement to be brought before a meeting of the Council of my Society. And I now have the honour to convey to you the resolution which was carried unanimously by my Council on 27th November, 1961:—"Mr. Justice Ross was a member of the Council

of the Law Society of South Australia from 1936 to 1952. He was a member of the Statutory Committee from 1942 until his elevation to the Bench in 1952. He was President from 1947 to 1949. He was Vice-President of the Law Council of Australia from 1948 to 1949. At all times whilst holding office in the Society, and at all times since his appointment to the Bench of the Supreme Court, His Honour has brought to the performance of his duties those qualities of integrity and wisdom for which he is so well known to the public of South Australia. The Society congratulates him on a successful tenure of judicial office and wishes him a long and happy period of retirement."

HIS HONOUR MR. JUSTICE ROSS—Chief Justice, Sir *Herbert Mayo*, Mr. Attorney-General, Mr. *Bright*, and my good friends of the legal profession: I am overwhelmed and deeply moved by the kind and most generous remarks made by the speakers about myself and my career, and their expressions of goodwill. I know that I do not deserve all the praises that they have given me, but nevertheless they will be a very pleasant memory for me to take into my retirement.

Chief Justice, may I say that I am happy to know that you are making a good recovery from your indisposition and have been able to attend my last Full Court. It is your first visit to Adelaide since your illness. I know it must have required a considerable effort, and I do very much appreciate your attendance.

I am very honoured indeed by the attendance of so many of my friends, both old and young, who have abandoned more lucrative engagements to attend here this morning, and wish me farewell. I thank you all for the compliment you have paid me.

I started in my law course as an articled clerk just about fifty-one years ago, and was admitted to the Bar, as you have been told, in 1914—forty-seven years ago. This meeting of the Full Court is within a few days of the anniversary of the Full Court sitting at which I was admitted, presided over by Sir *Samuel Way*. I am very glad to see in the body of the Court two of those who were admitted with me that day so many years ago—Mr. Arnold Moulden and Mr. David Waterhouse, both of whom have been my very good and close friends during my years in the law.

Looking back at my start in the law, although Sir Herbert said I had genes which suggested a legal career, I do not remember that I had any great enthusiasm or any sense of vocation when I started in articles and at the University. I think I started because I had what was known as a classical education, and my headmaster thought I might be suited for the law, or the law might be suited to me. But knowing nothing about the law I was rather inclined to think it would be a dull, uninteresting and somewhat monotonous occupation. I had not been very long at the University when I realised I was wrong on every count. Somehow my lecturers, Professor Jethro Brown, Mr. Justice Poole, as he afterwards became, Mr. Percy Johnstone, and Mr. Edward Benham, kindled a small spark of interest in the law which grew into a flame and has never yet been extinguished. And indeed, looking back today,

if I could turn the clock back fifty years and have another choice as to the career I would take, I think I would unhesitatingly choose the law again.

In many respects I have had a very fortunate life. At all times I have had a very happy home life, and it is particularly happy at present—a wonderful wife, my children all happily married, and a round dozen of grandchildren to take an interest in.

I came through the first Great War serving in the ranks, suffering no injuries other than deafness caused by service in the artillery. When, in 1952, the then Attorney asked me whether I would become a Judge, I was somewhat concerned about this deafness, as to whether it might increase, and I withheld acceptance until I had had a medical examination and was assured it was not likely to get much worse. I hope my deafness has not prevented me from hearing in Court anything that I ought to have heard.

I worked hard in my practice, but I do not think I worked nearly as hard as present practitioners do. When I started, the population of the State was less than half of what it is now, and there were very nearly as many legal practitioners; the motor car was in its infancy, and there was not a great deal of litigation, but, nevertheless, I was in a small office and possibly fortunate in that respect because I often had to take responsibilities which usually do not fall to the ordinary articulated clerk. I worked hard as a practitioner, but thoroughly enjoyed the work, and it is not difficult to work long hours at an occupation which holds your interest.

I particularly enjoyed the Bar work, with its competition and its hustle and bustle and the infinite variety which is the charm of that type of legal work, and I found in the law rich rewards and much satisfaction—the richest reward being the valuable and lasting friendships which I have made with other members of the profession.

In my early days the judicial office seemed so much above me that I really did not aspire to it, and I was somewhat surprised when I was appointed a Judge at the age of sixty, when it seemed to me there were many able and younger members of the profession eligible for selection. I took up my office somewhat apprehensive that I might not be able to attain the standards set by the other members of the Court and their predecessors. The tributes given to me by the speakers this morning give me some ground for hope that I have not entirely failed in this respect.

I greatly enjoyed my judicial life. When I joined the Bench all my colleagues were personal friends and those friendships have continued and been strengthened by our association in this Honourable Court. We have been a very happy family indeed, and although at times we have differed in opinion, I can remember no angry word, and I know that in my retirement I will greatly miss the close day by day association which I have had with my colleagues.

I am particularly grateful to the Chief Justice for the help, advice and kindly encouragement he has given me throughout my term of

office, and my other colleagues have always been willing to help me and have done so whenever I have sought their assistance.

There were no changes on the Bench during my first few years of office, but since then there have been a number of changes owing to retirements and owing to the tragic deaths of Mr. Justice Piper and Mr. Justice Brazel, both dear friends of mine, whose untimely deaths were a very great loss to the Judiciary, the profession and to the community at large. And this Court was also saddened by the death of another old friend, Sir Charles Abbott, who gave very great service to this Court and the community as a Judge over thirteen years or more.

My thanks are due to the members of the profession, particularly members of the Bar. When I took my seat in this Court I asked for their assistance, co-operation and patience. I have had their assistance and co-operation in full measure, and if at times, as I suspect, they were impatient with anything I did or decided, then they concealed that impatience from me. Perhaps it was my deaf ears again.

My thanks also go to the Officers of the Court, the former Masters, Master McBride and Master Kirkman and the present Masters, Master Walters and Master Forster, who have been friendly and efficient and who have given me unflinching assistance whenever required.

I would particularly like to mention the stenographers and typistes of the Court. I have never been able to think satisfactorily when talking to tape recorders, with the result that those who type my judgments have had to decipher my rather poor calligraphy. After a few weeks I find some difficulty in reading my own handwriting. They somehow or other get very close to whatever I intended to write, and I am grateful to them for the effort that must have taken.

During my term of office I have had eight associates, and have been very fortunate in each. They have all been most helpful. It is very important for a Judge to have an associate who is a person pleasant to associate with, and who attends to the Judge's needs so far as his judicial work is concerned. I hope they have learned something from me. I regard each of them as a friend. Most of them are already well established as members of the profession, and I will watch their careers with a great deal of interest.

Now is the time for me to say goodbye to you all. I go into retirement with the pleasant feeling that I have the goodwill of many friends. I feel very confident that the future of our great profession is in safe hands. There are many established counsel in this State with great ability and high ideals, and many competent juniors coming to the fore. I shall watch their progress with sympathetic interest. I extend my best wishes to one and all of you for the coming Festive Season. May the blessings of health, peace and prosperity be amongst you all during 1961 and the years which lie ahead.