

Norman Lyall (14 August 1929-28 April 2022)



When I wrote, recently, a tribute to Tony Scotford, one of the former partners of Ebsworth & Ebsworth, who died on the 4 April 2022, I referred to another partner of the firm, Norman Lyall, who together with Tony had helped form the NSW Branch of MLAANZ and attended the 1975 Maritime Law Association of Australia's first meeting in Melbourne. They were amongst the initial members of what became MLAANZ, and attended many Branch meetings and Conferences.

It is a sad and strange coincidence that within 24 days of Tony Scotford's passing, Norman Lyall has also died, at the age of 92. Norman Lyall was a partner at Ebsworth & Ebsworth from 1959, having joined as an Articled Clerk in the early 1950s. He became the Senior Partner and President of the Law Society (in 1996) and had been a Notary Public for many of those years.

It is also a strange coincidence that the only two lawyers that I knew anything about when I arrived in Australia from the UK in November 1974 were Norman Lyall and Tony Scotford. I explained how that had come about in the FS Dethridge Memorial Address which I gave in 2018. It was through an introduction that I had from Brian Brooke-Smith, the managing director of Bilbroughs, the managers of the London P&I Club. I therefore went to meet Norman Lyall and Tony Scotford soon after my arrival in November 1974.

As I recounted in that Address, Ebsworth & Ebsworth did not have a place for me when I arrived. What I did not recount, however, was that Norman Lyall was very kind to me. Appreciating that Christmas was fast approaching he said "if you want to come into the office and bring our law reports up to date, we'd be happy for you to do so until you find employment, in order to earn a bit of pocket money". I took up that offer and diligently placed those little black and red "note up" labels throughout the law reports for future generations to see whether they had been cited, affirmed, or reversed.

Thanks to that short period of part time employment I not only got to know some of the partners better but became friendly with Leigh Warnick, one of 3 young solicitors/articled clerks that were employed at that time. That friendship continued after I obtained employment before Christmas at

Allen Allen & Hemsley, who occupied four floors in the old P&O Building on the corner of Hunter and Castlereagh streets, five floors above the Ebsworth and Ebsworth office. When he decided to leave the profession and work in-house in Melbourne, Leigh informed me that Norman Lyall had asked him whether he thought I would be interested in replacing him. I was and went to be interviewed by John Bowen, commencing employment with Ebsworth & Ebsworth in July 1976, where I remained until the end of 1997, having joined the partnership in 1981.

I became aware fairly early on that Norman had at least two vices. On a Saturday morning he was frequently to be found in the boardroom late in the morning around about lunchtime listening to a radio and having a cigarette. His vices were an addiction to the Goon show, which he listened to religiously, and smoking. It does not seem to have done him very much harm. I would like to think he also had a Gin & Tonic with him but I honestly cannot remember whether that was the case. Nor can I remember whether Patricia had banished him from the house and if so whether it was due to the Goons or the smoking.

I owe him many debts of gratitude. One was that he was friendly with another solicitor, Alan Mitchell, who became President of the NSW Law Society in 1980. He was a regular squash playing opponent of Norman's, well past the age at which they should have given up playing such an energetic sport. Having been called to the Bar of England and Wales and being admitted as a Non Practising barrister when I arrived there was the small issue of doing Conveyancing and Accounts papers before I could transfer to the Law Society, having decided very shortly after joining the firm that I wanted to continue doing maritime legal work full time. It was Alan Mitchell who suggested to Norman that I could become admitted as a solicitor in New South Wales without troubling an examiner if I had become admitted first in Victoria as a barrister and solicitor.

Norman was probably the last legal practitioner that I have had the privilege to work with who practised in such a wide variety of areas. Whilst his practice was primarily a maritime legal practice, he also did a considerable amount of personal injury work (all the P and O Passenger claims) and commercial litigation, defamation, and really anything that presented itself. He gave his time generously to the solicitors and also the Redfern Legal Centre. He was the partner responsible for managing the work that came to the firm from Poseidon Insurance Company which was the fronting insurance company for the P and I Clubs who insured their members' workers compensation and common law liabilities for stevedores' and crew injuries, many of which he handled himself. He and Tony Scotford were directors of the TT Club's local company from its inception and worked closely with its CEOs over many years, Geoff Abraham, Guy Cassar, Barton Phillips and Marcus John. He made enduring friendships with many of the people he worked with as clients, including the leaders of the P and I Clubs and welcomed them into his home on their annual visits to Sydney, and Ian Bowden at Law Cover.

The two maritime cases that he conducted that stand out in my memory were from very early on: *South Coast Basalt Pty Ltd & Pioneer Concrete (NSW) Pty Ltd and RW Miller & Co Pty Ltd v Hethking Steamships Pty Ltd* (1981) 1 NSWLR 356; and *Bistradic v Rokov* (1976) 135 CLR 552.

The *South Coast Basalt* case involved damage sustained to a cargo of basalt on the Hethking's owned "Cobargo" being carried from the south coast of NSW to Sydney, which had been time chartered by the Ebsworth & Ebsworth client RW Miller & Co Pty Ltd, in place of its usual vessel, the "Lisa Miller" which was undergoing repairs. The first instance judgment of Yeldham J in that case ran to over 130 foolscap pages and covered numerous legal issues ranging from title to sue arising from the inter company sales of the cargo between the plaintiff companies, the terms of the contract of affreightment between the basalt owners, the plaintiffs, and RW Miller & Co Pty Ltd and the Baltim 1939 Time Charter, and questions of foreseeability and remoteness of damage, as well as seaworthiness of the vessel. The case was heard in the old Supreme Court building, in the Number 4 court where I recall Justice Yeldham interrupting Gleeson QC, as he was making submissions about the "Wagon Mound" (*Overseas Tank Ship (UK) Ltd v Morts Dock and Engineering Co No.1*

(1961) A.C 388) to inform those in the court that that case had started out its journey to the Privy Council in that very same court.

The basalt or aggregate was found to have been contaminated on arrival. One of the principal causes of contamination of the aggregate cargo, as Yeldham J found, had occurred in the hold of the vessel and "arose from the combined presence of residues of sugar on the gusset plates, limbers, sheathing, tank top, and elsewhere and water, between 9 and 12 inches deep, lying in the hold as a result of the previous wet cargo of coal and unable to be removed because of the condition of the bilge pumps. Employees of Jubilee Engineering, whose evidence was accepted, had removed from the area of the hatbox forming part of the bilge pumping system, in the after hold, with some difficulty, substantial quantities of solid material consisting of sugar and coal. The claim therefore derived from an excessively wet cargo of coal which had mixed with the water so that a mixture of molasses had contaminated the basalt. The circumstances were unusual. How it was discovered was even stranger.

As described in the decision of the Privy Council: "The mode of its discovery was bizarre. As a result of the evaporation by the summer heat of the water in which the sucrose was dissolved, clouds of bees were attracted to the deposit of sugar in a batch of aggregate passing along the conveyor belt to the Blackwattle Bay plant".

As well as seeking to defend the claim RW Miller sought to pass on any liability it had to Hethking. At first instance it was successful in defending some of the Plaintiffs' claims but those which it was found liable for were successfully passed on to Hethking. In the Privy Council the appeal against the first instance decision which had disallowed parts of the Plaintiffs' claims was successful but again was passed through to Hethking. That case was a notable victory for Norman.

Norman acted for the owners of the "*John Dory*" in *Bistradic v Rokov* (1976) 135 CLR 552, which went to the High Court. It caused some consternation at the time as it was a wake up call that Australia's maritime laws were becoming archaic for want of reform to elderly statutes that had been inherited from the British Parliament and which had undergone reform in the UK, but those reforms did not apply to the Colonies. The High Court dismissed the appeal made by Bistradic from the decision of the New South Wales Court of Appeal which had upheld the first instance decision, to the effect that amendments made to the Merchant Shipping Act 1894 in the UK in 1958 were not in force in New South Wales, thus entitling the owners of the ship "*John Dory*" to limit their liability to the appellant to \$1,489.75, being the limitation amount applicable in 1894 under section 503 of the *Merchant Shipping Act*.

It was not long before the MLAANZ took steps to remedy the same problem in relation to the Admiralty law which applied in Australia. Norman was one of the nine signatories to the Report of the Joint Committee of the Law Council of Australia and MLAANZ on "Admiralty Jurisdiction in Australia" in 1982 which persuaded the Commonwealth Attorney General to refer the question of Australia's Admiralty Jurisdiction to the ALRC.

Another case which I suspect gave Norman as much pleasure as any others was *Oceanic Sunline Special Shipping Co Inc v Fay* (1988) 165 CLR 197. In that case Ebsworth and Ebsworth acted for Mr Fay who had been horrifically injured whilst trap shooting on a cruise in the Aegean Sea. Having issued proceedings against the Greek shipowner in Australia, Mr Fay was faced with a stay application which went to the High Court. His defence of that application was successful, and he was therefore able to proceed with his claim in this jurisdiction. It was of course a leading case on forum non conveniens and was the case in which Australia declined to follow the recent House of Lords decision in the *Spiliada*.

To show Norman's wide variety of legal practice mention need only be made of the fact that for many years Ebsworth & Ebsworth and Gillotts in Melbourne acted as agents in New South Wales

and Victoria respectively for each other and one of Gillott's major clients was the publisher, David Syme, who not infrequently was sued for defamation in New South Wales. Norman acted in many defamation cases as a result of that connection and briefed David Hunt QC and Robert Stitt as his junior and then Ruth McColl over many years. One of those cases also went to the Privy Council: *David Syme & Co v Lloyd* (1985) 3 NSWLR 728. The Lloyd in question being Clive Lloyd the captain of what became one of the most invincible cricket teams in the world. The article complained about in the proceedings was entitled "Come on dollar, come on" and was reporting on the first "World Cup Series" matches between Australia, Pakistan and the West Indies. The case had been lost at first instance but successfully overturned in the NSW Court of Appeal. The appeal from that decision to the Privy Council was allowed. And the \$100,000 verdict that Clive Lloyd had achieved was restored to him. Interestingly Lord Griffiths was sitting on that case, which was heard in October 1985. I happen to know that the first case he sat on in the Privy Council had been earlier that year in July 1985 when, as I entered the building at the same time as him, on the first day of the hearing in the *Candlewood Navigation* case the lady at the desk leapt up on his Lordship's approach to tell him he had used the wrong entrance, clearly not knowing that there was a private entrance for the Judiciary. His Lordship had been a very accomplished cricketer having secured his blue at Cambridge all three years he was there, and gone on to play some first class cricket for Glamorgan. Seven years later he was President of the MCC and also became Captain of the Royal and Ancient Golf Club at St Andrews. I wonder if Clive Lloyd ever got to thank him!

Norman ran many significant cases in his career covering a wide range of maritime legal issues including *J. Gadsen P/L v Australian Coastal Shipping Commission* (1977) 1 NSWLR 356; and was involved in at least one other case in the High Court -the conflict of law case of *McKain v RW Miller and Co (South Australia) P/L* (1992) 174 CLR 1.

On looking back, it was amazing how much responsibility young solicitors were given during the 1970s and 80s at Ebsworth & Ebsworth. The experience of watching Murray Gleeson QC in his prime cross examining and addressing Yeldham J. was priceless. All of us who passed through that firm during those years benefited from the tutelage of John Bowen, Norman Lyall and Tony Scotford. They were all very different personalities but leaders of the profession who were prepared to share their knowledge and encourage the development of younger practitioners. It was a testament to the quality of the firm that a number of Judges pointed their sons or daughters in the direction of the firm. They included: Angus Begg, Sandy Street, Sally Sheppard, Bruce Yeldham, Tony Fox and Frazer Hunt.

Mention has already been made about the Redfern Legal Centre but Norman also had a long association with St Lukes Private Hospital. He was very generous with his time, notwithstanding his family of four daughters. I am sure others could testify to the manner in which he conducted himself as President of the Law Society, an honour that he richly deserved. He was unassuming and went about his work in everything he did very quietly, without fuss, and seemingly never flustered.

Stuart Hetherington 13 May 2022.