

Maritime Law Association Conference — 7 August 1988: Notes for the opening speech

Mr Justice Thomas*

It is with surprise and delight that I open this conference and deliver the opening address. Since being on the Bench I have determined only two substantial maritime law cases; and the second of those was reversed by the Full Court on at least three points. Therefore I am as aware as you are of the unpredictability of this branch of the law.

The following handwritten notes made over 13 years ago may be of some relevance.

9th June, 1976 — Peter Murrell phoned. Trying to form a branch of the Maritime Law Association here. Main one in Melbourne. Can I give a lecture on Admiralty Law to inaugural local meeting.

7th July, 1976 — Admiralty Law Lecture. Estralita Room, Embassy Hotel.

It is surprising that the lecture did not deter those brave people who met that evening to form a Queensland Branch. They were harangued and probably harassed by an address which included a short history of admiralty law, the onus of proof in loss by disappearance or sinking, the in rem action, and the Carriage of Goods by Sea Act 1924-1973. The breadth of the topics would now probably take several days at a conference

Whilst there are some maritime law experts around, we lack a sufficient community of them. Even within the select group in the profession who practise in this field, there is not yet in Australia, or presumably in New Zealand the wide general understanding or wide grasp of principle that permits one to assume that one's opponent knows all the relevant tricks. Not many practitioners have the day to day familiarity which enables a quick identification of the real issues and the immediate discarding of the irrelevant ones.

This can sometimes lead to oppressive litigation, as can the very issues that sometimes need to be litigated, especially in marine insurance. So too can the attitude of the company concerned. Some multi-national corporations act responsibly; others are simply used to having their own way. So

* Supreme Court of Queensland.

the problem of oppressive litigation has many causes but the problem to which attention is directed today is the state of knowledge of the profession. The judiciary cannot be absolved from being a part of this situation. Judges might pretend, from case to case, to a certain familiarity with this branch of the law, but the truth is that very few have had the advantage of a wide practice or association in such litigation, and most are no better equipped to dissuade counsel from irrelevant points than those who advance them.

The Maritime Law Association therefore has an important role to play in education, in cultivating interest and in spreading knowledge in this very specialised area. It is encouraging to note that the primary objects of the Association are to reform the maritime law and to facilitate justice in its administration. There is no doubt that the Association played a significant part in the creation of the recently passed Admiralty Act 1988 — a very important and sensible rationalisation of the law. The dark days of arcane admiralty law will very soon be behind us. Our jurisdiction as a nation has been declared; and we have appropriately invested both state and federal courts with jurisdiction. Problems of demarcation and of jurisdiction should soon be a thing of the past. The structure has been set up to enable the courts to provide speedy commercial resolution of disputes which the community obviously desires.

The Association's educational function is as important as that of law reform. The education of a maritime lawyer is not achieved by the imparting of pure legal principles. The sensible mixture, in this conference, of papers that deal with matters of practical experience along with legal topics, shows that the organisers are aware of this. The real basis for understanding maritime law comes through knowing something of the practices of the maritime community, through coming to terms with the jargon of shippers and mariners, and through obtaining a grasp of the way things are done in the specialised areas to which maritime law applies. One cannot effectively run a case involving, for instance, exceptions to liability for negligence, or limitation of liability, or the effect of a bill of lading, without a working knowledge of maritime conventions, the extent to which they have been received into domestic law and the basis of some apparently strange commercial practices. These are not matters of law — they are primarily fact and practice.

I believe that the Association seeks to remove the mystery from these processes. With the removal of that mystery, genuine disputes can be identified and determined according to law quickly and inexpensively. That is the service that any genuine commercial court offers. It will be the mark of a mature legal commercial community when it is achieved.

Of course some practitioners are already doing a lot of this work, and will see all this quite differently. But those of you who see yourselves as experts should ask — how many other similarly qualified experts are there on the other side with whom you have daily dealings?

There is no cause for shame in acknowledging that in this respect we may still be far from land. We are at least on course and the interesting papers that will be delivered during this conference will surely bring us closer.

In all this I am comforted by the thought of the role that the Association has to play and the value of the efforts over the next four days.

Among my 1976 souvenirs I found some letters from a body called the Maritime Law Association of Australia. One of these announced that an approach had been received from New Zealand to allow members from that country to join the Association. This was followed by a report of a meeting in Melbourne on 14 October 1977. I quote —

The meeting was opened by Sir Ninian Stephen who delivered the first Frank Stewart Dethridge memorial address

Those addresses were started on a high note, and clearly the Association continues to attract speakers of the highest calibre, with Sir Harry Gibbs delivering the address this year.

Changes made to the articles include provision for the establishment of 'branches' in place of the former local committees

Mr Peter Graham made a presentation to the Association of two volumes of colour photographs of the North and South Islands of New Zealand He and Mr Ian Mackay already have approximately 40 lawyers interested in joining.

1976 and 1977 were years of progress, when the Association ceased to be an essentially Victorian body and became a wider and more representative association.

The report finally records —

We have been pressed by our sole Tasmanian member to hold the 1978 Annual Meeting in Hobart.

By 1988, in the conference invitation the president is able to state that "the Association and its affairs are almost 'big business' now". It certainly seems that way. I am not sure whether the Tasmanian member ever had his way;¹ but surely someone sooner or later will prepare a very interesting history of the Association. It is pleasing to see that it is alive and well, and to remember that I was involved in a small way in the inauguration of the Queensland branch.

My Chief Justice sends his greetings to the conference and wishes it success.

It is with much pleasure that I declare this Conference open.

¹ [Ed He did. The 1978 Annual Conference was held in Hobart].