

45. FIRE AND EXPLOSION IN ABERDEEN HARBOUR

"Solicitors' point" is a term used by counsel to denote and denigrate points that their instructing solicitors suggest with enthusiasm but are as unattractive to judges as they are attractive to lay clients. It is an unfortunate term, being capable of creating the impression, which would be false, that solicitors are prone to making unhelpful suggestions. They are not. And I well remember one instance in which my instructing solicitor had to point it out to me that the line which I was pursuing, though highly gratifying to the lay clients, was beginning to alienate the judge. The case concerned a disaster in Aberdeen Harbour. It was the second time I was briefed in a case concerning a disaster in those waters.

The first arose out of a fire on the Jumbo Floating Restaurant while it was under construction. It was no doubt the inspiration (if that is the word I want) behind one of the incidents in the television mini-series "Noble House". On the screen, it became a fire while the restaurant was in operation. That gave Mr Pierce Brosnan an opportunity to dive dramatically

off a burning deck. The real fire occurred, as I have indicated, during construction. That a fire occurred is perhaps unsurprising given that painting and welding was going on at the same time. In this first case, I was the senior of Ossie's two juniors (Ronald Mayne being the other junior). Our clients were fisher folk whose junks and sampans were destroyed in the fire as it spread from the Jumbo. They were given legal aid. Initially a firm of solicitors were assigned. But eventually the Legal Aid Department stepped in, as it sometimes does, to act as solicitors in the case. Once that happened Ossie ceased to be in a position to suppress any suggestion made by the solicitor in charge of the case, she being his wife Mrs Pauline (later Lady) Cheung.

Such points as Pauline made during the various consultations were good ones. But Ossie did not like interruptions of any kind whatsoever. He did not dare to interrupt Pauline's interruptions. So he would glare at me; I would look at Ronald Mayne; and Ronald (who had a very charming manner) would ask Pauline to let Ossie have (or rather retain) the floor. In this relay-race manner, the case was brought to a satisfactory conclusion by way of compromise.

The other Aberdeen Harbour disaster case, however, had to be fought out – twice. I was not involved in the first fight. The wrong party was sued, and the claims were dismissed. Fortunately, the litigation had

proceeded speedily so that the period of limitation had not yet run out. There was still time to sue the right party (in other words, the party who was in the wrong).

Quite simply, the story of the case was this. A fishing trawler had sailed out of Aberdeen Harbour on a fishing expedition. At the end of that expedition, she returned to her anchorage at Aberdeen Harbour. Marine Department personnel boarded her for the purpose of a routine inspection. Entering the wheelhouse, the leader of the inspection party switched on the ignition. Whereupon the trawler exploded, bringing about a tragic loss of life and the destruction of all nearby junks and sampans.

The first and incorrect action was brought against the Marine Department whose officer had switched on the trawler's ignition. But there was no earthly reason why he should have known what the consequences would be.

Following the failure of the first action, the Legal Aid Department took over as the solicitors, with their Mr Geoffrey Harrison as the solicitor in charge of the case. I was instructed as leader. Mr Ruy Barretto (now a silk) was instructed as my junior. As it appeared to us on the available evidence, the explosion was of liquid petroleum gas (LPG) on board the trawler.

The second action was brought against the owners of the trawler. At the trial, our case ran thus. LPG was used to fuel the cooking fires in the trawler's galley. As the contents of an LPG cylinder ran low, it no longer provided the large flames desired. So it was replaced by another cylinder. And so the process of replacement went on, cylinder after cylinder. What happened to the old cylinders? They were stored not on deck but in an unventilated hold. And there they continued to leak LPG. By the time the trawler had returned to her anchorage, the hold was fairly full of LPG. And since the cylinders, still leaking, were left in the hold as the trawler lay at anchor, the hold became even fuller of LPG. It only took one spark to trigger a massive explosion. That spark came when the Marine Department inspector switched on the ignition.

We said that that is how the explosion came to occur and that the trawler owners were negligent in storing the leaking cylinder in an unventilated hold and, further, in leaving them there even after arriving back at Aberdeen Harbour. The trawler owners disputed all of that. Each side call an expert.

It was when I was cross-examining the other side's expert that Geoffrey Harrison pointed out to me, rightly, that I was beginning to alienate the judge. I had not noticed that it was becoming the sort of cross-examination that appeals essentially to the audience at the back of the court but not to the person at the

96. THE LAN KWAI FONG DISASTER

On 9 November 1992 I began hearing a case in which the word "disaster" was repeatedly used throughout the evidence and argument. The case was brought by a company in liquidation, which had been a futures broker, against its former chairman. Its case was that he had, in breach of the duty of care which he owed it, permitted it to open an account without adequate safeguards and to operate that account unsecured, inadequately margined and over-exposed. While the account was being thus operated, there occurred the global market crash which in Hong Kong began on "Black Monday" 19 October 1987. When the account was liquidated on 2 November 1987 it was in deficit to the tune of \$83.9 million. The customer defaulted, and the clearing house set up by the Futures Exchange looked to the company, as the broker, to meet the loss.

There was an issue as to whether the loss was foreseeable. I held that it was. A market crash of doomsday dimensions would, I was prepared to accept, be unforeseeable. But I noted that disastrous market crashes had a long history. And such a crash, I held, is not unforeseeable merely because it sets a new record

in the extent of the points lost in a day or over a longer period.

I awarded the company \$83.9 million damages against its former chairman. That was done by a judgment delivered on the morning of 31 December 1992.

Early the following morning, 1 January 1993, I received a telephone call from the then Chief Justice, Sir TL Yang, calling upon me to conduct an inquiry into a disaster which had occurred several hours before when the year 1993 was only several minutes old. This was a true disaster, involving not the loss of money but the loss of 21 human lives. It was the Lan Kwai Fong disaster. Lan Kwai Fong is a popular and, indeed, famous entertainment spot. And the disaster consisted of a pile up of persons one falling on top of the other in extremely crowded conditions shortly after the revellers gathered there had participated in the countdown to the New Year.

I submitted an interim report to His Excellency the Governor, Mr Christopher (now Lord) Pattern on 18 January 1993. It had to be submitted so soon because the tragedy, having occurred during the celebration of one festival, at least interim measures to avoid a recurrence had to be recommended in time for them to be put in place before the celebration of the next festival beginning on Lunar New Year's Eve on 22 January 1993.

"No, it has to be on Saturday", I insisted.

"I see", he said. I wonder if he did.

Those last days were an anxious time. And even today I am still troubled by the thought that there might have been loose ends left untied before I parted with my cases as counsel.

102. IN THE WIDER WORLD

Nowadays many, perhaps most, law students spend their summer vacations in barristers' chambers or solicitors' offices. If that is for the sole or even main purpose of seeing legal practice, I would be inclined to think that their time would be better spent doing summer jobs that would give them experience of working life beyond the practice of law. But I suspect that spending time in barristers' chambers and solicitors' offices helps a lot when it comes to obtaining pupillage or training contracts.

A very wide range of jobs during the summer vacation was an important feature of my years in London reading for the Bar. It was in the sixties.

I worked at two department stores: John Lewis on Oxford Street and Harrods in Knightsbridge. At each I was a porter: in the garden furniture department at John Lewis and in the crockery sorting room at Harrods. I saw two celebrities while at John Lewis: the comedian Kenneth Williams and Paul McCartney of the Beatles. Mr Williams spoke in real life in much the same way he did in films and on television.

Perhaps acting is largely just being. Mr McCartney appeared to have perfected the art of moving about unobtrusively so as to minimise the attention that he attracted. If that helped him get at least a measure of the privacy that every human being deserves, then I am happy for him.

Harrods no doubt had its share of famous shoppers. But none of them wandered down into the basement where I worked.

At each of these two department stores – indeed everywhere I worked during those summers – I made good friends. The old hands were always supportive.

A smaller store at which I worked was Robinson & Cleaver on Regent Street. There I worked as a packer – also in a basement. We packed expensive towels and bed linen for despatch to well-heeled customers. These items would be packed first in crêpe paper, then in corrugated paper and finally in plain brown paper. The corrugated paper was in an enormous roll on a rack positioned at the front of the room. We packers worked standing at long tables arranged rather like desks in a classroom. We each had a knife for slicing off portions of corrugated paper as needed. For a time, I kept slicing off either too much or too little corrugated paper. But nobody laughed, and I soon got the hang of it.

I thought (and still think) that we worked at a good pace. But the supervisors didn't seem to think so. Descending into our dungeon one day, a member of that superior breed informed us that there was no longer any need to bother with one particular order. "You lot have taken so long", he said, "the customer has died".

Another of my duties at this establishment was to take parcels to the post office for posting to customers. All these parcels were loaded into a huge four-wheeled barrow which I had to push across Regent Street, provoking much horn-honking from angry motorists. To this day, I have great sympathy for persons pushing things along or across streets.

Robinson & Cleaver's premises were very close to Carnaby Street of worldwide fame during those swinging sixties. Its reputation was for trendy clothes. But the only things I even bought in Carnaby Street were sandwiches. (Banana on white bread was very cheap, but I occasionally indulged in the luxury of roast beef on brown bread. The custard tarts looked very nice, but then all I did was look).

My most abiding memory of Robinson & Cleaver is that of an Irish girl who worked next to me. She had jet-black hair. Perhaps she was descended from one of those sailors of the Spanish Armada who survived