

The *Kyeema* air disaster

Saturday, 25 October 2008 marked the 70th anniversary of the *Kyeema* air disaster at Mt Dandenong in which two of the New South Wales Bar's 'best and brightest' – Leonard Abrahams KC and Alfred Gain – perished.

The *Australian Law Journal* (1938-39) (12 ALJ 225) described Abrahams, then 51, as 'as one of Sydney's foremost silks.' He had been admitted to the bar on 29 August 1913 and, according to the ALJ:

as a junior gained an extensive practice, specialising particularly in bankruptcy and company law. His practice, later, became very general, although (while almost equally at home in the High Court or before a jury) he leaned perhaps to the equity side. He took silk in 1932. At the time of his death he was engaged as leading counsel for the British Medical Association before the Royal Commission on National Insurance. He had previously appeared at a number of royal commissions and governmental enquiries relating to various matters and had twice appeared before the Privy Council. His advocacy was forceful and clear, his demeanour outstandingly fair and courteous and his capacity for rapidly grasping the essentials of a case, both in fact and law, probably unexcelled amongst the present generation of leaders. No man at the bar was more widely and justly esteemed.

Alfred Gain, 10 years' Abrahams' junior, was described by the ALJ as having 'had a remarkable career.' He had only been at the bar for eight years but was described as having 'occupied a position as a junior almost unrivalled':

He commenced his career in the Postal Department, leaving that department to enlist at the age of eighteen. He served in the Great War from 1915 to the end of the war, being twice wounded. After his return to Australia, he spent twelve months in Randwick Military Hospital owing to heart trouble, and it was thought that he might not live. However, he recovered and re-entered the Postal Department, afterwards transferring to the Customs Department. From there he transferred to the Taxation Department and, while in this department, he studied accountancy and obtained his degree as a qualified public accountant. Upon the amalgamation of state and federal taxation departments in 1923, he took the opportunity of leaving the service with a view to taking up law. He went through the course at the law school of the Sydney University gaining first class honours. He served for some time with Messrs Allen, Allen & Helmsley, solicitors, and left them in 1930, to go to the bar stepping immediately into a busy and rapidly increasing practice. His practice was general but he strongly favoured the equity side and was a specialist on taxation matters. He combined to an extraordinary degree an immense knowledge of case law and capacity for hard work with common sense and sound judgment. His pleasant, unassuming personality won for him a large number of very firm friends. By his death we have lost one who, much as he had accomplished, was but on the threshold of his career and for whom no place which the bar or the bench could offer seemed too remote.

Sir Anthony Mason knew of both men through his own uncle (Mason KC) who was a contemporary of Abrahams. According to Sir Anthony, his uncle had a very high regard for Abrahams, both professionally and as a person and he regarded him, if not actually, then as potentially the best silk at the New South Wales Bar. As to Gain, the generally received

wisdom is that he was brilliant. Sir Anthony recalled that when he himself came to the bar in the late 1940s, he was struck, going through the *State Reports*, the *Commonwealth Law Reports* and the *Australian Law Journal Reports*, by the frequency of Gain's appearances, including on appeal and very often, unled. Bearing in mind that Gain was only in his eighth year at the bar at the time of the *Kyeema* disaster, that is telling as also is the fact that, in many of his High Court appearances, he appeared in cases which emanated from outside New South Wales. In other words, he, after only eight years at the bar, had developed a national reputation and a national practice.

A ceremony to mark the anniversary of the incident and to remember the lives of those lost was recently held at Mt Dandenong. *Bar News* thanks Anthony Abrahams, a well-known solicitor and former Wallaby, for the following personal account of that service in which, amongst others, the life of his grandfather, Abrahams KC, was commemorated.



Abrahams KC, returning to Australia via the United States after a case before the Privy Council, had an introduction to Clark Gable, whom he visited at MGM Studios. Gable was filming *Test Pilot* (released in 1938), which accounts for the uniform. Photo: courtesy of Anthony Abrahams.

Ceremony at Mt Dandenong

25 October 2008: This morning, I got into a rented car in a suburb in Melbourne. I took out of my bag an automobile GPS, applied its suction pad to the windscreen surface and turned it on. Almost instantly the screen informed me that the machine had found several satellites and I tapped into its memory 'Ridge Road, Mount Dandenong'. I had already been guided, with precision, by an Oxford accented female voice, from Melbourne Airport to Canterbury. The same 'lady' had first asked me a series of questions - whether I wished the shortest route or the quickest route, whether I minded paying a toll - my answers to which were made by the slightest touch of a finger on the screen.

Again with precision, the lady took me to a high point on the ridge of Mount Dandenong. Sometimes she would tell me kilometres in advance whether I should hold to the right or veer to the left, which

exit from the roundabout I should take. All the while my groundspeed, my ETA and other pieces of information were being renewed and printed, printed and renewed, on the screen of the GPS.

Seventy years ago: Adelaide, Tuesday, 25 October 1938: It is mid-morning. An Australian National Airlines DC-2 bearing the name *Kyeema* is about to take off for Melbourne (having arrived from there earlier that morning) with its capacity complement of fourteen passengers and four crew. Travel by aeroplane has only just begun to gain acceptance – at least amongst those that can afford tariffs significantly higher than they are today. This and the smaller population of Australia of the time would mean that a number of the plane’s passengers, from business, professional and political circles, would have a nodding acquaintance with each other.

The passengers include an exceptional politician, Charles Hawker, whose name is now carried by the South Australian federal electorate of Hawker. Having lost an eye on the Western Front during the Great War, and been wounded elsewhere to the extent that he could only walk with callipers, Hawker’s ‘longest journey’ in his own words, was when, as the youngest minister in the Lyons UAP cabinet, he crossed the floor to vote against the increase of parliamentary salaries in the post-Depression environment of the time, thus condemning himself to ejection from the Cabinet. Hawker is seen as a potential prime minister, both by his own party and by the Curtin led Opposition.

A group of wine growers is also on the plane, representatives of three families in that industry, including Thomas Hardy, the father of yachtsman Sir James Hardy.

The passengers also include a group of lawyers who are returning to Sydney from Perth where they have been representing Australia’s doctors, through their client the ‘British’ Medical Association, forerunner of the AMA, in a royal commission enquiring into the introduction of a national health scheme. The team is led by my grandfather, barrister Leonard Abrahams KC, and includes a brilliant junior, Alfred Gain (also wounded on the Western Front) and two solicitors from the leading firm of Allen Allen and Hemsley (now Allens Arthur Robinson), an open-faced Mr James Massie and a bespectacled Mr Lancelot Shirley. Mr Shirley and his actuarial friend Gordon Goddard (also representing the BMA - and a *Kyeema* passenger) are prominent members of Queenscliff Surf Lifesaving Club. One can imagine these fine professionals, staying overnight at a discreet club or good hotel in Adelaide, after arriving from Perth on 24 October, the royal commission hearings behind them and a good dinner and a few drinks their just reward. All is well.

A three-days-married honeymooning couple, a widow and two businessmen, complete the passenger list.

The advent of the all-metal DC-2 and the DC-3 is seen at the time as a turning point in aviation transport - ‘powerful, superbly engineered, all metal machines whose speed, rate of climb, multi-engined safety and blind flying capacity are sufficient to cope with any contingency’. According to flight safety expert (and author of *Disaster in the Dandenongs*), Macarthur Job, ‘the unpalatable truth is that without a corresponding technical advance in supporting ground based radio navigation aids, the sophisticated new airliners may even have been



Douglas DC-3, *Kyeema*, VH-UZJ, in flight.

Photo: National Library of Australia, nla.pic-vn3723034

less safe for round-the-clock, all weather operations than the stout old Avro 10s of yesteryear, as the speed of the new machines could render them more lethal in the event of an accident’. Ironically, the technical advances are available but not installed; government slowness in putting them into place is already a scandal. A major air disaster is openly feared by the experts.

The *Kyeema* lies glinting in Adelaide sunshine. When all is ready, the passengers file out of a small departure lounge, enter in by a door set in the rear of the plane to be greeted by 27 year old ‘Air Hostess’ Elva Jones, ‘trim’ says Macarthur Job, ‘in her brass-buttoned navy blue uniform’. They negotiate varying distances up the slope of the aircraft to their high-backed seats set one to each side of the aisle and Miss Jones commences handing out the obligatory barley sugars. The plane taxis to the end of the runway, the engines are run through the usual procedures, Captain Alfred Webb releases the brakes, goes to full throttle and *Kyeema* is shortly afterward angling its way upwards, its propellers churning the air as it moves toward cruising altitude.

The weather conditions for most of the *Kyeema* flight were fine - so good in fact that the crew probably slipped into ‘fine weather relaxation’, relying on visual sightings and perhaps delegating the log keeping to a cadet pilot acting as radio operator. Visibility was excellent at the time when the *Kyeema* gave a position report as ‘passing [the Victorian township of] Daylesford’. The problem was that they were not passing Daylesford but were over either Sunbury or Gisborne, two townships 20 miles closer to Essendon Airport.

In the Melbourne basin, the *Kyeema* entered into thick fog. Believing the aircraft to be twenty miles further west than it was, the pilot overflew Essendon Airport.

The rugged western slopes of Mount Dandenong are extremely steep, thickly covered by a majestic forest of tall, mostly branchless mountain ash, messmates and stringy barks. Just after one o’clock on Tuesday, 25 October 1938 the *Kyeema* sheared through the trees below the ridge line and slammed into the mountain with such force that the bulk of

its fuselage and wings were entirely fragmented. Our family legend is that my grandfather's gold fountain pen, bearing the initials L.S.A, was found more than one hundred yards from the point of impact. A huge blaze burned for several hours.

A ceremony

The site of the accident is marked by a cairn with a plaque recording the crash; and a second one bearing the names of the victims. A precipitous scramble down the slope brings you to a cross bar mounted on two posts marking the exact point of impact of the plane. Little effort of imagination is necessary; the towering trees, the unchanged slope; it is all as close as could be to seventy years ago. When the fog comes in, syphoning and swirling up the slopes and around the trunks, you can see the two woodsmen, Logan and Murphy, who raised the alarm, peering through the thickest fog they have seen on the mountain and listening with increasing horror, as the whine of the engines becomes a roar and what is to follow becomes a certainty.

Saturday, 25 October 2008 marks the seventieth anniversary of the *Kyeema* crash. A moving ceremony was held, attended, surprisingly, by nearly a thousand people. Several organisations and individuals excelled themselves in the organisation, led by Mr Max Lamb and Mr Job. The smartly decked out and precisely drilled cadets of the Australian Air League beautifully performed all the honours; the Victorian Police Pipe Band played the soldier songs of the time, there was a fly-over – intended to consist of two DC-3s but, due to technical problems, finally made up of one, passing over twice; and a number of people spoke, one of whom, David Hawker, a descendant of Charles Hawker was speaker of the House of Representatives under the Howard government.

But perhaps most evocative of all was the female member of the Wurundjeri People who belong to that area, who performed the Welcome to Country. She spoke of the Land and of belonging to the Land and one gained a sense of the Land, up there on the high slopes, receiving in the dead and forever cradling their souls.

Post scriptum

The *Kyeema* victims did not die in vain. The sound and fury after the accident finally forced the government to bring in the beam navigation system on all major routes throughout Australia, ushering in a new era in civil aviation.

In turning on the GPS to return to Melbourne, I thought of the crew of the *Kyeema*. An aviation version of my device, as simple as a tiny screen and a suction pad could, today, be attached to the windscreen of the aircraft. A crisp-as-starch Oxford-accented voice would instruct the pilot at every turn of the route. The lady would be there at the point of entry into fog in the Melbourne basin; she would be there when Essendon Airport was looming up. And if the pilot should display the slightest tendency to overfly the runway, the slightest inclination to head toward the Dandenongs, lights would flash, beeps would sound, and that precise voice would be heard to intone 'Perform a U-turn at the earliest possible moment'.

By Anthony Abrahams

The writer is indebted to Macarthur Job for much of the technical information in this article.

New South Wales Law Almanacs now online

The entire collection of all past New South Wales Law Almanacs (from 1886), with the exception of 2002 (the only year it was not published), are available electronically on the website www.lawalmanacs.info They have been catalogued by year and are fully searchable.

It is expected that various institutions, including the NSW Attorney General's Department, Law Society of NSW and the Francis Forbes Society for Australian Legal History will have links on their websites to this invaluable resource. The Almanacs have great historical significance; they are an essential tool of trade for legal historians. It is not possible to do any in-depth research into the state's legal history without referring to them. Members of the public seeking information about their family

history can also now readily have access to the Almanacs. In the past only a few collections were publicly available. In many cases the earlier volumes, particularly from 1886 to 1932, held in collections had been irreversibly affected by bacteria and were quickly deteriorating.

This project was carried out by the New South Wales Bar Association with the assistance of a grant made by the trustees of the Public Purpose Fund. Special thanks go to the Law Society of New South Wales and the Attorney General's Department, as well as Thomson Legal, for their support and permission to reproduce the works in which they own copyright.