

## THE RT HON SIR ROBERT MEGARRY

*An address given at a Service of Remembrance and Thanksgiving in Lincoln's Inn Chapel on 12 March 2007 by Sir Martin Nourse*

Amongst members of Lincoln's Inn, Sir Robert Megarry was, with Lords Denning and Hailsham, one of the three great men of the latter half of the last century. Each was of outstanding intellectual brilliance: Denning as a judge, Hailsham as statesman and philosopher, Megarry both as a judge and, as Professor Prichard of Nottingham has rated him, one of the top five academic lawyers of the post-war period. It is probable that no judge since Jessel, certainly no Chancery judge, has wielded such influence from a seat at first instance. And as scholar, teacher and author, his contribution to the law was simply immeasurable. In the legal profession he was unique for excellence as both practitioner and academic. To find anyone comparable in both spheres of achievement you have to go back to names such as Coke and Blackstone.

Ted's accomplishments were so many and varied that it would be an easy thing for a piece like this to descend into a mere recital of dates, distinctions, publications and so forth. I intend to speak of him mainly as an author of famous books, as a judge, as a devoted servant of the Inn and as a man.

Ted did not come here to eat his dinners until 1941, when, having been rejected for war service on medical grounds, he was working in the Ministry of Supply. By that time he was 31. He had practised as a solicitor for six years, teaching also for Bar and Solicitors' exams for much of that period, then at Cambridge for a short time at the beginning of the war. In 1936 he had married Iris Davies, who many years later became a student member of the Inn. They had three daughters, Lindsay Merriman, herself a barrister member of the Inn, Susanna Sale and Jacquetta, and seven grandchildren, six of whom are with us today. When you remember how hard Ted worked for all his adult life, it is marvellous to think that he could have made time also to enjoy and be loved by his family.

In 1939 Ted had published his first book entitled *An Introduction to the Rent Acts*. This book was a foretaste of everything that was to come. It was the slimmest of volumes, the text running to no more than 59 pages. In the preface the author said that a book of that size was necessarily the result of compression and selection. Compression there certainly was, and clarity too. In later editions, as the subject became more complicated, the book was called simply *The Rent Acts*. By 1988, after Ted's retirement from the Bench, the 11<sup>th</sup> edition had grown to three volumes, though the third was only made necessary by the introduction of assured tenancies.

In 1944 Ted was called to the Bar, having received a certificate of honour in the final examinations. In 1946 he published his second book, the *Manual of the Law of Real Property*. I read from the preface to the first edition:

“This book is primarily intended for the examination candidate whose main anxiety is not whether he will head the list but whether he will appear in it at all. Ever since my first unwilling introduction to the law of real property, my belief has been that the chief difficulty of the average student is that of understanding what it is all about ... .”

The Manual is now in its eighth edition (2002) edited by Tony Oakley of Ted’s old college, Trinity Hall. In his foreword Ted said that his regrets at contributing so little to it were the greater because it must be rare for someone in his nineties to be given the chance of editing what he wrote in his twenties.

In the preface to the first edition of the Manual it was said to be a simplified version of a larger text-book on the same subject which had originally been intended to be published first. No doubt because Ted was becoming fully involved in his practice at the Bar and in teaching for the Council of Legal Education and at Gibson and Weldon, the text-book was not published until 1957, and it was only published then because Bill Wade had joined with him in taking over the manuscript, revising it, bringing it up to date and weaving much new material into it. There emerged a work of true joint authorship, perhaps with the authors, like Hardy and Littlewood, being unable, as the years went by, to say which of them had been responsible for what.

The text-book was of course Megarry and Wade’s *Law of Real Property*. In the preface to the first edition the authors said that it was a book in which they had attempted to state the English law of real property in a reasonable compass and in a form which would be both intelligible to students and helpful to practitioners:

“for the most part it is our hope to have achieved a work of dual utility.”

This modest ambition has been triumphantly fulfilled and there is probably no text-book in the language of which that could be more justly said. For 50 years now the *Law of Real Property* has been a resort for every serious student of the law and the vade mecum of every land law practitioner.

On very much the same level of achievement was Ted’s 23<sup>rd</sup> edition (1947) of *Snell’s Equity*. In the words of Professor Prichard, he turned it into a text-book remarkable for its succinctness, pithiness and clarity. Between 1954 and 1973 he edited five further editions with Paul Baker, with whom, over the years, he collaborated in many other ventures and on whose care and scholarship he placed a just and enduring reliance.

If Ted had never written anything else, these four books would have more than justified a reputation for legal scholarship and learning unequalled in our

time. They were works of true creativity, in regard to whose composition there can be no overestimate of the labour which must have been devoted to the ordering of the material, its compression, its clarification, its presentation. From the Introduction to the Rent Acts we may be sure that he would have agreed with Callimachus that *mega biblion is mega kakon*. Inevitably, all his books have had to expand over the years. But it is significant that the text of the current edition of the Manual, which was always intended to remain a student's book, does not extend to much more than 600 pages.

My feeling is that Ted looked on the Manual with a special affection. When I myself was at Cambridge, in the days before we knew anything about Megarry and Wade, we regarded it as absolutely indispensable in preparing for the real property paper in Part II of the Law Tripos. When I once told Ted that, he said that the brighter students still turned to Cheshire's *Modern Real Property*. Take that as you will.

When Ted Megarry was appointed a judge in 1967 he joined some highly-regarded colleagues, amongst whom, Russell and Wilberforce having by then been removed to higher things, there were still four of those who had been part of the extraordinary transformation of the Chancery bench which took place between 1960 and 1961. They were: Cross, Buckley, Pennycuick and Plowman. Three others had been appointed since: Ungood-Thomas, Stamp and Goff, each of whom was, in his own way, in the first case in his own idiosyncratic way, an excellent first instance judge.

Every new judge makes his own impression on those who regularly plead before him. To begin with, we found Ted quite formidable and a little disconcerting. That was because, unlike, for example, Geoffrey Cross, he did not immediately react to a point as it was put to him. He liked to turn it over in his mind. Often he came back with a rather different point. He wanted to be certain that every point was considered, and it might be said that he sometimes carried that tendency too far. There is a well-known story of one busy junior now about to hold high office in the Inn, who, having given the judge a hefty list of the points he proposed to take, was asked whether he was also going to take such and such a point. He replied:

“My Lord, I am sure I have got many bad points, but that is not going to be one of them.”

It soon became apparent that Ted was a very good, in some respects an outstanding, judge. In argument he was patient, courteous, considerate; in judgment meticulous, methodical, decisive. You never had to tell him anything twice. As in his books, he reduced everything to order and clarity. It is hard to think that anyone could ever have come out of his court feeling that he had not had a fair crack of the whip.

As to his judgments, it can be said of them, much as Professor Heuston said of Lord Denning (though the style was very different):

“If the reader of the law reports had not already realised it, there were now many signs of a powerful new mind at work.”

The first case in which that was evident was *Re Flynn deceased* in 1968, when, in order to decide where Errol Flynn had been domiciled at his death, it was necessary, as it is in most such cases, to investigate at length the events of his life, his characteristics and propensities. It has been said that in that judgment Ted demonstrated a racy turn of phrase. I would prefer to put it that the style was exuberant. What I do believe is that, if he had decided that case at the end of his time on the Bench, he would not have expressed himself as he did. Indeed, as the years went by, the style of his judgments changed significantly. By the time you get to *Re Montagu's Settlement Trust* in 1985, shortly before he retired, you find that it has become speculative, respectful but penetrative in its treatment of precedent and, in the best sense, argumentative. In between there is a long line of authoritative judgments which have consistently been approved at higher levels.

You could say that in his later judgments Ted worried things out. By that nothing derogatory is intended; rather the reverse. His judgments will remain a repository of learning, as much for what they did not decide as for what they did. Moreover, by and large, when you get to the end of a Megarry judgment, you have the feeling that the decision, however long it may have taken to get there, was both correct and in accordance with the merits. There have been very few judges of whom the same can be said.

In 1976, on the retirement of Sir Anthony Plowman, Ted became the senior Chancery judge and was appointed Vice-Chancellor of the Chancery Division. In 1982, by virtue of the Supreme Court Act 1981, he was deemed to have been appointed Vice-Chancellor of the Supreme Court under that Act, and as such an *ex-officio* judge of the Court of Appeal and Vice-President of the Chancery Division. In other words, he became a fully-fledged head of division and remained as such until he had to retire, at the age of 75, in 1985. His statutory translation caused him great amusement and we had a dinner to celebrate it.

Having been for the last five years of his time one of “his” judges, as I think he would have thought of us, I can speak to the admirable way in which he looked after us. In everything which affected our well being, whether it was some personal problem or a point of procedure or practice which needed to be settled, he was concerned and accessible. It was a pleasure to go and see him in his room on the West corridor, he probably in a cardigan and carpet slippers, with open law reports and text books piled one on top of another all over his huge desk. With his clerk, Arthur Bradford, and Terry Rayson, then in charge of

the Chancery lists, he kept a light but firm touch on the workings of the Division.

Having taken silk in 1956, Ted became a Bencher in 1962. He had always given as much to the Inn as his time allowed, frequently dining on the Bar table and staying on to chat with the students afterwards. As a Bencher he became more involved in the affairs of the Inn, becoming Treasurer in 1981. In all his later years he was a regular attender at Council, where his reticent wisdom was much in evidence. One of his regular contributions was his insistence that Honorary Benchers should, by reason of distinction as judges, practitioners, or academics, be truly worthy of the honour.

Perhaps Ted will be best remembered for his chairmanship of the Wine Committee, which, being a true oligarchy, must be unique in collegiate institutions in this country. It is wholly self-elective, the Treasurer, who appoints the members of all other committees, having no part in its composition. There have been only four chairmen since the war: Norman Daynes, Ben Bathurst, Ted and now Richard Sykes. Ted took over in 1979 and remained chairman for more than twenty years.

Once again, on his appointment everything was reduced to order. *Nullum quod tetigit non ordinavit*. We received proper cellar lists, and at any given time Ted could tell us exactly what we had consumed in each category of wine and what we needed for the future. When it came to matters of taste he was, I think, a claret rather than a burgundy man, though he loved the red rhones, Côte Rôti being a special favourite. He had a passion for sauternes.

It must be said that Ted had one or two *idées fixes*, in particular the belief that we should not drink burgundies or rhones with lamb, or indeed with anything except beef and game. From time to time a number of us, chiefly Jean-Pierre Warner, our best judge of burgundy, protested at this. From time to time it seemed that the chairman had agreed to alter the practice. From time to time it became apparent that he had not.

I have said nothing about Ted's education at Lancing and Trinity Hall, nor yet about the Miscellanies. He was for 24 years president of the Lancing Club and served for over 35 years (23 of them as chairman) on the committee of the Friends of Lancing College Chapel. There he was the driving force in the campaign to restore the west end of that remarkable building, including a new rose window which was one of the largest of its kind to be constructed in England since the middle ages. Ian Beer, the headmaster between 1969 and 1981, has written of Ted's secret generosity in helping to fund that great project. Later, in consequence of his further generosity, it was decided to set up a fund to pay for the wine at an annual dinner for the teaching staff, still known as Megarry's Bounty.

Ted's career at Cambridge has become legendary, though for unusual reasons. He is said to have obtained his third class degree by only one mark. In later years he probably valued his time there most for its nurturing of his wide and deep knowledge of music. In 1930 he became Varsity's first music critic, writing under the name of John Davidson in order to conceal from his tutor the time he devoted to that pursuit. He assembled a huge collection of records of classical music, his favourites including Mozart, Strauss and the operas of Wagner. When he was at Cambridge he could hardly have expected that in 1973 he would be elected an honorary fellow of Trinity Hall.

Ted has told us that all three volumes of *Miscellany-at-Law* had their fragmentary origin in his second year of reading law at Cambridge in 1930. He found that every now and then there were phrases and sentences in judgments that were striking and noteworthy, that there was wit, and that there were remarkable events and curiosities. Many of these survived in the notes that he then began to make and keep. The first two *Miscellanies* were published in 1955 and 1973. The *Law Journal* described the first as "an astounding miscellany of wit, humour, anecdote and genuine jurisprudence." They could only have been written, as they were, by a scholar with an engagingly original mind and the great sense of fun to which the Preacher has referred.

It is indeed appropriate that Professor Garner should have given us a reading from the third *Miscellany*, which was published a year or so before Ted's death. Many of us recollect Ted saying in the late 1990s, when he still had his room at the Institute of Advanced Legal Studies up in Russell Square, that he feared that it would never see the press. And then in July 2004 Bryan Garner, like some *deus ex machina*, intervened. In Ted's words, as soon as he saw the incomplete typescript he very generously offered to edit it and see it through to publication. This he did, with the help, in various ways of each of Ted's daughters. Ted said that his gratitude to Bryan was inexpressible. And so should be ours, for having added this final jewel to the repertoire.

In 1973 Ted and Iris gave up their house in Richmond and came to live in the Inn, latterly on the top floor at 5 Stone Buildings. In 2001 Iris died, having spent her last five years in a home. After 60 years of such a marriage, that was an agonising period for Ted, who did everything he could to lighten her days there. Those of us who remember Iris in her prime think only of the delightful disposition, the striking chestnut hair, the beautiful complexion.

Ted lived on at 5 Stone Buildings until he was 95, working almost to the end, increasingly solitary, cared for mainly by Susanna who lived nearby and Lindsay who lived not far away. In 2000 we had a great dinner in Hall to celebrate his 90<sup>th</sup> birthday. Until about the end of 2003 he still came over for lunch or dinner in the Inn. I last saw him at 5 Stone Buildings in June 2004, when I went to ask for his help about what I should say at Bill Wade's memorial

service. Though he was physically frail, the mind was as capacious as ever, the memory bright, the wit and twinkle as of old.

Twice in his last years I heard Ted say: "I love the Inn." Be sure that he did and that, in return, the Inn loved him. Of that there is no surer testimony than the portrait by Anthony Morris which has hung in the Benchers' Lobby since 2001, which those of you who have not seen it will see as you pass through to the Great Hall after this service. Though I believe that Lindsay, Susanna and Jacquetta all approve of it, Ted himself thought that the depiction was too stern. That was an appearance he could give to those who did not know him. To know him was to understand that underneath there was that tremendous sense of fun.

A scholar does not have to be a teacher too. But the greatest scholars must be those who have a passion to pass on to others what they themselves have learned. Ted, who was a teacher in everything he said and wrote, was not a cloistered scholar, unless it be that his cloister was the whole of the common law world. He was the *megas prophetes* of our time. *Requiescat in pace* one who has done such service to his fellow men.