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THE ENGLISH ASSOCIATION

Presidential Address

1964

GEMS IN ERMINE

BY

THE RT. HON. LORD DENNING

P.C., D.L., LL.D.

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GEMS IN ERMINE

YOU may wonder why I have chosen the title 'Gems in Ermine'. It is because I wish to speak to you of judges and of judgments. The judges wear the fur of the ermine as the mark of their calling. They give their judgments by word of mouth. These judgments have been taken down and recorded in our law books for over 700 years. There are to be found there 'full many a gem of purest ray serene'. When great issues have been at stake, the judgments are marked by eloquence, wisdom, and authority. They have laid the foundations of freedom in our land. It is due to the judges, more than to anyone else, that this England is a land where:

> A man may speak the thing he will,
> A land of settled government,
> A land of just and old renown,
> Where Freedom broadens slowly down
> From precedent to precedent.

Today I would try and pick out for you some of these gems. Judges do not speak, as do actors, to please. They do not speak, as do advocates, to persuade. They do not speak, as do historians, to recount the past. They speak to give judgment. And in their judgments you will find passages which are worthy to rank with the greatest literature which England holds. John Buchan at one time desired to make an anthology of them. 'It would', he said, 'put most professional stylists to shame.'

I will start with the greatest event in our legal history. It was nigh on seven centuries and a half ago. On Monday, the 15th day of June 1215, John, King of England, met the barons 'in the meadow which is called Runnymede between Windsor and Staines'. There the barons made demands which the King accepted. The demands were made, I like to think, in our English tongue. But they were written down in the Latin script by one of the clerks in the royal Chancery. And, when accepted, they became the Great Charter. Many copies were made. To each of them was affixed the Great Seal of the Realm. They were sent to castles and cathedrals throughout the land. You can see to this day in the British Museum the copy which was sent to Dover Castle. You can see in the cathedrals at Lincoln and at Salisbury the copies which were sent there. This Great Charter dealt with grievances of the time in a practical way. It gave legal redress for the wrongs of a feudal age. Its effect on succeeding generations has been due, not so much to the specific remedies which it provided, but to the language in which it was couched. Here we have set down the guarantee of freedom under the law.

No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

Immediately following it in the Charter is the guarantee of impartial administration of justice:

To no one will we sell, to no one will we refuse or delay, right or justice.

And this is how the Great Charter ends:

Wherefore it is our will, and we firmly enjoin, that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand—the above-named and many others being witnesses—in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

Those words have echoed down the centuries. Four hundred years later Sir Edward Coke, Lord Chief Justice of England (in his second Institute, *Coke's Second Institute*, page 56, when commenting on the Great Charter), forsook his crabbed learning, threw aside his lawyer's commentary, and brought out this little gem:

Upon this chapter, as out of a roote, many fruitfull branches of the Law of England have sprung . . . As the gold-finer will not out of the dust, threads, or shreds of gold, let pass the least crumb, in respect of the excellency of the metal; so ought not the learned reader to let pass any syllable of this law, in respect of the excellency of the matter.

It was this same Lord Chief Justice who stood firm for the rule of law against the encroachments of the King. It is recorded in the twelfth volume of Coke's reports at page 63 in the case of 'Prohibition del Roy'. It was on a Sunday, 10 November 1608, King James I called the judges together and claimed the right to decide cases himself in his royal person. He vouched Bancroft, Archbishop of Canterbury, in his support. The Archbishop said: 'This is clear in divinity; such authority, doubtless, belongs to the King by the word of God in the Scripture.' To which it was answered by Coke, in the presence and with the clear consent, he says, of all the judges of England: 'The King in his own person cannot adjudge any case, but this ought to be determined in a Court of Justice, according to the law and custom of England.' The King replied, 'My lords, I always thought, and by my soul I have often heard the boast, that your English law was founded upon reason. If that be so, why have not I and others reason as well as you the Judges?' To which Coke replied:

True it is, please Your Majesty, that God has endowed Your Majesty with excellent science as well as great gifts of nature: but Your Majesty will

allow us to say, with all reverence, that you are not learned in the laws of this your realm of England. The law is an art which requires long study and experience before that a man can obtain to the cognizance of it. The law is the golden met-wand and measure to try the causes of Your Majesty's subjects, and it is by the law that Your Majesty is protected in safety and in peace.

King James was greatly offended by being thus answered. He said, 'Then I am to be under the law. It is treason to affirm it.' Coke, in reply, quoted Bracton, a judge in the reign of Henry III. 'Thus wrote Bracton, "The King is under no man, save under God and the law" '. That one sentence is the watchword under which Parliament and the lawyers waged the Civil War.

I have spoken of the barons in the year 1215. Some of their descendants remain to this day, but their families for the most part have died out. This passing has not been unnoticed by the judges. One of the most eloquent passages in our law books touches on it. It was in the year 1626 when a question arose as to who was the rightful Earl of Oxford. Robert de Vere claimed as heir male. Willoughby de Eresby claimed through a female. Chief Justice Crewe and four other judges were called in to advise the House of Lords. They advised in favour of Robert de Vere. The case is reported in Sir William Jones's report at page 101.

This great and weighty cause [said the Chief Justice], incomparable to any other of the sort that hath happened at any time, requires much deliberation and solid and mature judgment to determine it. Here is represented unto your Lordships an illustrious honour. I have heard a great peer of this realm and a learned say, 'There is no King in Christendom hath such a subject as Oxford'. He came in with the Conqueror. Afterwards he was created Earl of Oxford. This great honour, this high and noble dignity, hath continued ever since in the remarkable surname of *De Vere*, by so many ages and descents and generations, as no other kingdom can produce such a peer in one and the self-same name and title. . . . I have laboured to make a covenant with myself, that affection may not press upon judgment; for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of so noble a name and house, and would take hold of a twig or twine-thread to uphold it: and yet time hath his revolution, there must be a period and an end to all temporal things, an end of names and dignities, and whatsoever is terreine; And why not of De Vere?

For where is Bohun? Where is Mowbray? Where is Mortimer? and the rest? Nay, what is more and most of all, where is Plantagenet? They are entombed in the urns and sepulchres of mortality! And yet let the name and dignity of De Vere stand so long as it please the Lord.

Subtile disputants may disturb the best judgments: there have been many thick and dark fogs and mists raised in the fact of this cause. But truth lets in the sun to scatter and disperse them,

The Chief Justice having thus started, went on to show that Robert de Vere was the right Earl of Oxford and the de Veres, so long as the line continued, must be Earls of Oxford. But Robert de Vere died without an heir male: and the name and dignity of de Vere was entombed with the rest.

I cannot leave the year 1626 without noting that it was the year in which Lord Bacon died. Francis Bacon in his essays had proclaimed the virtues of a judge in the most eloquent fashion, but yet when he came to be Lord Chancellor, disgraced his high office by taking bribes. He was impeached, condemned to pay a fine of £40,000, and to be imprisoned in the Tower during His Majesty's pleasure. All this has long been forgotten but his essays are remembered still. When he writes on Truth, he makes a telling opening, 'What is truth? said jesting Pilate, and would not stay for an answer.' When he writes on Judicature, he gives advice that is as pertinent today as it was then:

> Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions, though pertinent. The parts of a judge are four; to direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select, and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much; and proceedeth either of glory and willingness to speak, or of impatience to hear, or of shortness of memory, or of want of a staid and equal attention.

It is as well to record that those were the words of Lord Bacon. *The Times*, in a leading article on 30 May 1964, attributed them to a much later personage in the law, Lord Birkenhead.

I pass now from the seventeenth century to the eighteenth. Here again we find the Chief Justices of England, Holt and Mansfield, laying down propositions of law in terms which compel assent by the very force of the language in which they are expressed. In 1703 a 'poor, indigent' man named Matthias Ashby went to live at Aylesbury. There was a general election. He went to the polling-booth and attempted to vote: but the returning officer refused to allow him to vote, on the ground that he was no settled inhabitant of the borough. Thereupon he brought an action against the officer for damages. The jury awarded him £5 damages, but the Court of King's Bench reversed the award and held he had no cause of action. The Chief Justice, Sir John Holt, dissented in an eloquent judgement which was afterwards upheld in the House of Lords, *Ashby* v. *White* 2 Lord Raymond at pages 953 to 956.

> Every man that is to give his vote on the election of members to serve in Parliament has a several and a particular right in his private capacity, as

freeholder, as citizen or burgess. And surely it cannot be said that this is so inconsiderable a right as to apply that maxim to it, *de minimis non curat lex*. A right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur in the making of laws which are to bind his liberty and property, is a most transcendent thing, of high nature, and its value is set forth in many statutes .... If the plaintiff has a right he must of necessity have a means to indicate and maintain it, and a remedy if he is injured in the enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy: for want of right and want of remedy are reciprocal. ... So if a man receives a slight cuff on the ear, though it cost him nothing, no, not so much as a little diachylon, yet he shall have his action, for it is his personal injury. It is no objection to say that this leads to multiplicity of actions; for if men will multiply injuries, actions must be multiplied too. 'But', says my brother, 'We cannot judge of this matter, because it is a Parliamentary thing.' O! By all means be very tender of that! But this matter never can come in question in Parliament, and there the plaintiff could receive no compensation for the wrong he has suffered.

When the case reached the House of Lords they adopted the view of the Chief Justice. They vindicated the fundamental right of a citizen to vote. The House of Commons were furious. They ordered the arrest of the solicitor who acted for Ashby, and they committed to prison five other men who, like Ashby, brought actions against the returning officers. These men applied for a writ of habeas corpus. They had counsel to argue for them. But the House of Commons themselves took action against the counsel. The Serjeant-at-Arms actually arrested two of the counsel and would also like to have taken a third, Mr. Nicholas Lechmere, 'but that he got out of his chamber in the Temple, two pair of stairs high, at the back window, by the help of his sheets and a rope'. The controversy was only resolved because Queen Anne prorogued Parliament and the prisoners were released.

In the latter half of the eighteenth century important principles were enunciated by the great Lord Mansfield. You will know, I expect, that it is declared in the Universal Declaration of Human Rights that 'No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms'. It was Lord Mansfield who first declared this principle in 1771 in *Sommersett*'s case. James Sommersett was a negro who was taken from West Africa to Jamaica where he was sold as a slave to Mr. Stuart. His master brought him over to England, intending soon to return with him to Jamaica. The slave did not want to go. But his master had him held in irons in a ship in the River Thames on his way back. The slave brought a writ of habeas corpus. His master said that the rights of the parties were to be determined by the laws of Jamaica where they were domiciled: and by the laws of Jamaica slavery was lawful. Many masters, it was said, had brought slaves with them to England and taken them back

to Jamaica again against their will. Lord Mansfield rejected the master's argument in this eloquent passage:

What ground is there for saying that the status of slavery is now recognised by the law of England? That trover will lie for a slave? That a slave-market may be established in Smithfield? I care not for the supposed dicta of judges, however eminent, if they be contrary to all principle. Villeinage, when it did exist in this country, differed in many particulars from West India slavery. The lord never could have thrown the villein into chains, sent him to the West Indies, and sold him there to work in a mine or in a cane field. At any rate, villeinage has ceased in England and it cannot be revived. Every man who comes into England is entitled to the protection of English law, whatever oppression he may heretofore have suffered and whatever may be the colour of his skin. The air of England is too pure for any slave to breathe. Let the black go free.

I come now to the most celebrated judgment of all the judgments of Lord Mansfield. He declared that the judges must decide according to law whatever the consequences. It was in the case of John Wilkes who had published, so it was said, a seditious libel in a paper called *The North Briton*. He had fled abroad and been outlawed. He returned and himself asked for the outlawry to be reversed, but he was cast into prison meanwhile. He was a popular hero and many supported him and urged his release. Numerous crowds thronged in and about Westminster Hall. Pamphlets were issued in the name of the people dictating to the judges the way they should decide. Reasons of policy were urged emphasizing the danger to the kingdom by commotions and general confusion. This is how Lord Mansfield answered them when he came to give judgment:

Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain. Unless we have been able to find an error which will bear us out, to reverse the outlawry, it must be affirmed. The Constitution does not allow reasons of State to influence our judgments: God forbid it should! We must not regard political consequences, howsoever formidable they might be: if rebellion were the certain consequence, we are bound to say 'Fiat Justitia, ruat coelum' (Let justice de done though the heavens fall.) The Constitution trusts the King with reasons of State and policy: he may stop prosecutions: he may pardon offences: it is his, to judge whether the law or the criminal should yield. We have no election. . . . We are to say, what we take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences. . . . Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here.'

These are fine words but I ought, perhaps, to add that Lord Mansfield went on to find a flaw on which he could and did reverse the outlawry. It was a most technical point. The sheriff had in the formal document referred to 'my county court' without adding the words 'of Middlesex' as he ought to have done—and for want of these two words the

outlawry was held bad and John Wilkes was released. It would be *lèse-majesté* to suggest that Lord Mansfield was influenced by the public clamour. But his audience knew not which to admire the more—the eloquence by which he silenced the people—or the subtlety by which he let their hero free.

Whilst recalling the eloquence of the judges, I would not omit the eloquence of the Bar. It was in the latter part of the eighteenth century that there shone the brightest star of the English Bar, Thomas Erskine. He was afterwards Lord Chancellor, but when at the Bar he did more than any other man to establish the independence and integrity of the Bar. Every counsel for an accused man must spare no effort to defend him, no matter how much public opinion is against him, no matter how distasteful is the task, no matter how small the fee. The great example of this was the conduct of Erskine when he was retained for the defence of Tom Paine. Tom Paine had written a book called *The Rights of Man*, which contained some offensive remarks about the authorities and was prosecuted for seditious libel. Erskine personally would not have approved the book in the least—very few people in England did—but the matter was to be tried in the court in which Erskine practised as a barrister and he felt it was his duty to defend the party accused to the best of his ability. So he accepted the retainer. Great pressure was put on him to refuse the brief. Lord Loughborough went out of his way to meet him as he was walking home and said: 'Erskine, you must not take Paine's brief.' Erskine replied: 'But I have been retained and I will take it.' He did take it and when he came to address the jury he used these memorable words:

> I will forever, at all hazards, assert the dignity, independence and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he will, or will not, stand between the Crown and the subject arraigned in the court where he daily sits to practise—from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scales against the accused, in whose favour the benevolent principle of English law makes all presumption, and which commands the very judge to be his counsel.

The jury found Paine guilty: but Erskine was made to suffer for accepting the brief. He lost his office as Attorney-General to the Prince of Wales. Nevertheless, the Prince of Wales afterwards made amends by appointing him Chancellor. So the principle was vindicated: and it has repeatedly been applied ever since.

During the nineteenth century there were many judges who were masters of English. One of the most famous was Mr. Justice Maule. His use of irony altered the whole course of the law as to divorce. It was in 1844 at the Assizes of Warwick. It was in the days before the courts could grant a divorce. It could only be obtained by Act of Parliament. Maule J. had before him a hawker who was convicted of bigamy. When asked what he had to say the hawker said that his wife had left the home and children to live with another man. He had never seen her since. And as she had deserted him, he married the second wife. Maule J. said to him:

I will tell you what you ought to have done: and if you say you did not know, I must tell you that the law conclusively presumes that you did. You ought to have instructed your attorney to bring an action against the seducer of your wife for damages. That would have cost you about £100. When you had recovered damages against him, you should have employed a proctor and instituted a suit in the ecclesiastical courts for a divorce *a mensa et thoro* (from bed and board): that would have cost you £200 or £300 more. When you had obtained a divorce *a mensa et thoro*, you had only to obtain a private Act of Parliament for a divorce *a vinculo matrimonii*. The Bill might possibly have been opposed in all its stages in both Houses of Parliament and altogether these proceedings would cost you about £1,000. You will probably tell me that you have not a thousand farthings of your own in the world. But that makes no difference. Sitting here as an English judge, it is my duty to tell you that this is not a country where there is one law for the rich, and another for the poor. You will be imprisoned for one day.

Those words so struck the conscience of the country that it gave great impetus for a movement for divorce. In a few years there was passed the Matrimonial Causes Act, 1857, which for the first time gives divorce by the courts so as to permit re-marriage.

Now I would pass to a case which goes to show the close connexion between law and morals. The crew of an English yacht—three men and the cabin boy—were cast away in a storm 1,600 miles from the Cape of Good Hope and were compelled to put off in an open boat. No water. No food except two one-pound tins of turnips. After four days they caught a turtle. After twelve days they had nothing to eat. On the twentieth day the three men decided for the sake of their families to kill the boy. They said a prayer, killed him, and fed on his body and blood. Four days later the three men were picked up almost dead. They were saved, restored to health, and charged with murder. The law was argued before Lord Coleridge, the Lord Chief Justice, and his brother judges. They held it to be murder (14 Q.B.D. at pages 286–7). The Chief Justice, in a striking passage, said this:

Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be justified by some

well-recognized excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called 'necessity'. But the temptation to do the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. . . . To preserve one's life is generally speaking a duty, but it may be the plainest and highest duty to sacrifice it. War is full of examples where it is a man's duty not to live but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the *Birkenhead*; these duties impose on men the moral necessity, not of their preservation, but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink, as indeed, they have not shrunk . . . It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what means is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting, was chosen. Was it more necessary to kill him than one of the grown men? The answer must be 'No'.

It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners' act in this case was wilful murder, that the facts as stated in the verdict are no legal justification of the homicide and to say that in our unanimous opinion the prisoners are upon this special verdict guilty of murder.

The court then proceeded to pass sentence of death upon the prisoners, but it was afterwards commuted to six months' imprisonment.

Coming now to this twentieth century, we have many passages to choose from. In the presence of Sir William Haley, I would first take the celebrated judgment of Lord Atkin whereby he upheld the right of the Press to criticize the proceedings in a Court of Justice. A newspaper in Trinidad had published a leading article which criticized the inequality of sentences passed in certain criminal cases. The Supreme Court of Trinidad convicted the editor of contempt of court and fined him £25. The Privy Council set this order aside. Lord Atkin said:

. . . no wrong is committed by any member of the public who exercises the ordinary right or criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part

in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

It was Lord Atkin, too, who, during the last war, stood firm for the liberty of the individual. A man called Liversidge had been detained by the Home Secretary under the Defence Regulations on the ground that the Home Secretary had reasonable cause to believe that he was of hostile associations. He asked for particulars of why he was said to be of hostile associations. All the courts refused to give it to him. They rested it on the constitution of the Regulations. Lord Atkin dissented and in a famous passage used these words:

I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive. . . . In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law. In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I.

I protest, even if I do it alone, against a strained construction put on words with the effect of giving an uncontrolled power of imprisonment to the Minister. . . .

I know of only one authority which might justify the suggested method of construction: ' "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean, neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." ' (Through the Looking Glass, c. vi.). After all this long discussion the question is whether the words, 'If a man has' can mean 'If a man thinks he has'. I am of opinion that they cannot, and that the case should be decided accordingly.

As all here are interested in English, I would not omit a passage from the judgment of one of the present judges of the Court of Appeal, Sir Charles Harman. He had to consider the will of George Bernard Shaw, who made bequest with the object of making a new British alphabet. Sir Charles Harman had to interpret the will and he opened with this delightful passage:

All his long life Bernard Shaw was an indefatigable reformer. He was already well known when the present century dawned, as novelist, critic, pamphleteer, playwright, and during the ensuing half-century he continued

to act as a kind of itching powder to the British public, to the English-speaking peoples, and, indeed, to an even wider audience, castigating their follies, their foibles and their fallacies, and bombarding them with a combination of paradox and wit that earned him in the course of years the status of an oracle: the Shavian oracle; and the rare distinction of adding a word to the language. Many of his projects he lived to see gain acceptance and carried into effect and become normal. It was natural that he should be interested in English orthography and pronunciation. These are obvious targets for the reformer. It is as difficult for the native to defend the one as it is for the foreigner to compass the other. The evidence shows that Shaw had for many years been interested in the subject. Perhaps his best known excursion in this field is 'Pygmalion', in which the protagonist is a professor of phonetics: this was produced as a play in 1914 and has held the stage ever since and invaded the world of the film. It is, indeed, a curious reflection that this same work, tagged with versicles which I suppose Shaw would have detested, and tricked out with music which he would have eschewed (see the preface to 'The Admirable Bashville'), is now charming huge audiences on the other side of the Atlantic and has given birth to the present proceedings. I am told that the receipts from this source have enabled the executor to get on terms with the existing death duties payable on the estate, thus bringing the interpretation of the will into the realm of practical politics.

The testator, whatever his other qualifications, was the master of a pellucid style, and the reader embarks on his will confident of finding no difficulty in understanding the objects which the testator had in mind. This document, moreover, was evidently originally the work of a skilled equity draftsman. As such I doubt not it was easily to be understood if not of the vulgar at any rate by the initiate. Unfortunately the will bears ample internal evidence of being in part the testator's own work. The two styles, as ever, make an unfortunate mixture. It is always a marriage of incompatibles: the delicate testamentary machinery devised by the conveyancer can but suffer when subjected to the *cacoethes scribendi* of the author, even though the latter's language, if it stood alone, might be a literary masterpiece.

This will is a long and complicated document made on June 12, 1950, when the testator was already 94 years old, though it is fair to say that it is rather youthful exuberance than the circumspection of old age that mars its symmetry.

Before I end I would like to tell you of two of the best illustrations of how lawyers can express themselves in words of great beauty and clarity. In former times, when we had Grand Juries, the oath which the foreman took was in these words:

I swear by Almighty God that I, as foreman of this grand inquest for our Sovereign Lord the King and the body of this County (or City) of —, will diligently inquire and true presentment make of all such matters, offences and things as shall be given me in charge or shall otherwise come to my knowledge touching this present service. The King's counsel, my fellows' and my own I will observe and keep secret. I will present no person out of

envy, hatred or malice, neither will I leave anyone unpresented through fear, affection, gain, reward or the hope or promise thereof, but I will present all things truly and indifferently as they come to my knowledge according to the best of my skill and understanding.

And finally I would conclude by telling you of the judges' oath, taken by every judge in the land on his appointment. Every word of it is worth weighing. 'I do swear by Almighty God that . . . I will do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill-will.' Take this oath word by word—

'I swear by Almighty God'—herein he affirms his belief in God and implicitly his belief in true religion.

'I will do right'—those are the guiding words which govern all the rest—I will do right, which means 'I will do justice', not 'I will do law'.

'To all manner of people'—rich or poor, Christian or pagan, capitalist or communist, black or white—to all manner of people he must do right.

'After the laws and usages of this Realm'—Yes, certainly, it must be according to law, but justice according to law, not injustice according to law.

'Without fear or favour, affection or ill-will'—Those are the words of the oath most frequently quoted, and highly important they are, enshrining the independence and impartiality of the judges; but still they follow the leading words 'to do right'—to do justice. Independence is all very well, but if it is not backed with justice, it turns to obstinacy and recalcitrance. And as to impartiality, you can be impartial in distributing injustice as well as justice.

Turn now to the oath of the Queen herself at her coronation and you will find that there, too, law and justice are treated as inseparable. The Archbishop asks 'Will you to your power cause Law and Justice, in Mercy, to be executed in all your judgments?' And the Queen answers 'I will.' Now the judgments of Her Majesty's judges are the judgments of the Queen herself. They are her delegates for the purpose. By this oath, they must in her name execute, not law alone, but 'law and justice': and they must do so 'in Mercy'; and how shall they be merciful unless they have in them something of that quality which 'droppeth as the gentle rain from heaven upon the earth beneath'?

I have done. It shows that our English tongue is ever able to meet the occasion with words to express it. Great principles put in majestic language. Deep thoughts conveyed with clarity, emotions with tenderness. My illustrations have been taken only of its use in the courts of law. But from this source it has spread far. It is the language of the courts of great nations overseas, our cousins in the United

States, our close friends in India and Pakistan, and the awakening countries of Africa. It is a great bond between us. Our English language and literature is the precious heritage we have received from our forefathers. This Association does well to do so much for its maintenance and preservation.