

IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL  
CIVIL DIVISION

Royal Courts of Justice.  
Friday, 30th July, 1982

*Before:*

THE LORD CHANCELLOR  
(Lord Hailsham of St. Marylebone)

THE LORD CHIEF JUSTICE OF ENGLAND  
(Lord Lane)

THE MASTER OF THE ROLLS  
(Lord Denning)

THE PRESIDENT  
(Sir John Arnold)

and

THE VICE-CHANCELLOR  
(Sir Robert Megarry)

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## **Valedictory Speeches upon the Impending Retirement of the Master of the Rolls**

*(In the presence of the Lords Justices, Judges of the High Court and members of the Bar)*

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(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, W.C.2)

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THE ATTORNEY GENERAL, The Right Hon. Sir Michael Havers, Q.C., represented the Senior Bar.

Mr SIMON BROWN represented the Junior Bar.

Mr F. ASHE LINCOLN, Q.C. spoke as Senior Practising Silk.

THE LORD CHANCELLOR: Mr Attorney, it is given to few men to become a legend in their lifetime. There would be few in this country who would deny that Lord Denning is one of these few. From the numbers and standing of his own fraternity of the law assembled here today to do him honour, we can readily infer that he has been and is a golden legend.

The law in England has its periods of growth and creativity. It has also enjoyed periods of quiescence and consolidation. Each period has its value, and, to a large extent, the values are complementary. When I was called to the Bar in 1932, Lord Denning had already been a barrister for nine years. He had six years to go before he donned the silk gown. The law, at least in my opinion, was in one of its periods of quiescence. It seemed almost as if Our Lady of the Common Law had gone into a decline, and had handed over her power of development to the Sovereignty of Parliament, which, however, in those pre-war days was not over-ready to accept the baton. True, there were landmark decisions from time to time, like *Donoghue v. Stevenson*, and even dissenting opinions such as that of Lord Atkin in *Liversidge v. Anderson*. I put this period of quiescence down as ending somewhere about 1945 after the decision in *Liversidge* and also after the decision in *Duncan v. Cammell, Laird*.

In 1945 Lord Denning had been a puisne judge for one year. It thus happens that his career spans the next period of about 35 years, let us say from *High Trees* to *Gouriet*, (*Laughter*), and it so happens, partly by chance, but partly also more than coincidentally, that during those 35 years Our Lady of the Common Law awoke from her slumbers and entered upon a period of renewed creativity, generated no doubt by the vast social and legislative changes which have overtaken us, and inspired by a desire to do right to all manner of people without fear or favour, affection or ill will, in the changed circumstances of the post-war world.

To this period we owe the revival and extension of that sleeping beauty, natural justice, the vast development of administrative law and judicial review, the renewed assertion by the courts of their independence of the executive, and their belief in the rule of law.

It would be wholly unjust to others to ascribe all of these changes to the Master of the Rolls who is now at length to doff his wig and lay aside the silk and golden robes. But it would be equally wrong in his presence and in this company not to acknowledge the vast debt which this revival of the common law owes to his deep learning, his powerful legal intellect, and even to his telling and pungent English style.

English law derives from statute and the common law. It is the function of the courts to interpret the one and evolve the other. From its dual source English law derives at once its vitality and its inspiration.

The Court of Appeal remains the focal point of modern English jurisprudence. It is not quite infallible, and, unless it becomes so, there will always be a humble purpose left for the Appellate Committee of the House of

Lords. (*Laughter*). But the Court of Appeal remains the mainspring of innovation, and, to abandon my metaphor, for twenty years Lord Denning has presided over the Civil Division of the Courts of Appeal.

Without him, things will never be quite the same again. I like to think that notwithstanding his retirement our period of creativity will not quite come to an end, still less relapse once more into quiescence. But, Master of the Rolls, we shall miss you. We shall miss your passion for justice, your independence and quality of thought, your liberal mind, your geniality, your unfailing courtesy to colleagues, to counsel, and to litigants in person who, like the poor, are always with us, particularly in the Court of Appeal. Above all, we shall miss you and your gift of friendship, your sturdy independence, and your unflagging and effervescent enthusiasm. Now you belong to history. But here you see around you a company of admirers and friends. We wish you well, both you and Lady Denning. Come and see us often. Wherever lawyers are gathered together they will always rejoice to see you in their midst.

THE ATTORNEY GENERAL: My Lord Chancellor, my Lords; I am here today with my learned friend the Solicitor General, the Chairman of the Bar Council, and many, many of my learned friends who have managed to squeeze into this court. I have to tell your Lordships that many more are still outside.

My Lords, just over 36 years ago a young and nervous naval officer on demobilisation leave went to Carr Manor in Leeds as a marshal to three High Court judges, Mr Justice Henn-Collins, the distinguished criminal lawyer Mr Justice Byrne, and the third was Mr Justice Denning. The nerves were quickly calmed; the young marshal was welcomed and spoiled by his masters.

One of the customs in those days was for the judges to lunch in the library at the assize court; and, inevitably, at lunch they discussed their cases. On these occasions Mr Justice Denning was likely to remark, for example, "I think the case of *McManus v. Bowes* covers this problem", at which stage the marshal would get to his feet and walk over to the shelves where the library was kept. Then Mr Justice Denning would go on and say, "I think you will find it in [1938] 1 King's Bench in the judgment of Lord Justice Slesser; I think at page 100." And if I was fast enough I got the book open. Then he would go on and say, "I think it is the paragraph which starts, 'I would like to add a few words'." Your Lordship was always right. It was an attribute and an asset which I have no doubt has been of great value to you in your judicial life.

My Lords, the marshal at that time did not dream for one moment that all these years later as Attorney General he would be saying farewell to that judge in the office of Master of the Rolls after such a distinguished career.

My Lords, may I be allowed one indiscretion from those marshalling days? A famous case had just been heard in the Court of Criminal Appeal, and Mr Justice Denning was to write the judgment. The case was called *Sims*. When the judgment had been completed, your Lordship handed it to Laurie Byrne to read. He read it and handed it back without comment. Your Lordship then said,

“Well; what do you think about it?” Mr Justice Byrne replied with one word – a comment indicating dissent. (*Laughter*). My Lord, it took many years before the House of Lords showed that Mr Justice Byrne was right!

My Lords, there was a story going round the Temple all those years ago, just after the *High Trees* case, of a very gloomy barrister pacing up and down King’s Bench Walk with a look of great depression. He was asked, “Why do you look so sad?”. He replied, “Because I am the only barrister in the Temple who has not had a brief as a result of the *High Trees* case.” (*Laughter*).

My Lord, today is a sad day, partly because your Lordship has given up your last vice, but also because this is truly the end of an era – not only are there now no judges in the High Court or the Court of Appeal who can stay on beyond 75, but because we have all become so used to knowing that, if the appeal was interesting enough, it was certain to end up before your Lordship. (*Laughter*). My Lord, again if I may be a little indiscreet, this knowledge has perhaps shaped a certain amount of government policy over the years. (*Laughter*). It is a useful weapon for government lawyers to be able to remind their administrators – and even ministers – that a certain decision by them is very likely to come before Lord Denning. For my part, my Lord, the protection you have always sought to give the citizen against bureaucracy has struck a strong chord of sympathy with me. I can also say how much I have always enjoyed appearing before your Lordship.

My Lord, your brilliant career is too well known for me to catalogue today; it has been done by others. My task is to bid you farewell, and on behalf of the entire legal profession and all your many friends to wish you many years of contentment in retirement and to assure you of our greatest respect and our deepest affection.

MR BROWN: My Lord Chancellor, my Lords; I am in the privileged position of saying farewell to your Lordship particularly on behalf of the Junior Bar. My Lord, I shall not repeat the tributes paid to your Lordship by those who have preceded me, although of course the Junior Bar adopts them with enthusiasm. Rather I would wish to record a different feature of your Lordship’s reign – a feature peculiarly at the heart of the Junior Bar – and it is this: the sheer pleasure that we have always experienced in appearing in your Lordship’s court. My Lord, it has ever been the most benign, the most indulgent and the most relaxed of courts; a court in which we could always look forward, upon sitting down, to being thanked with your Lordship’s radiant smile even for our most unhelpful contributions. (*Laughter*).

What seems to me a good illustration of your Lordship’s invariable kindness to counsel occurred earlier this year in the depths of that Arctic winter. During a case in which many counsel – leading and junior counsel – were appearing, one senior (and not, I am sure he would forgive my saying, a peculiarly illustrious one) arrived very late – an hour and a half late – and we were all kept waiting. Your Lordship’s court in due time assembled, and counsel embarked upon a

profuse apology. Your Lordship quickly cut him short, not to upbraid him, not to suggest to him that he might sensibly have left home earlier, but rather to thank him for taking such pains to come at all so that the hearing could be continued. (*Laughter*). Indeed, your Lordship congratulated him on overcoming the difficulties of his journey for all the world as if he had travelled in from Antarctica and not from Pinner. (*Laughter*).

One also has always felt, appearing before your Lordship in Court 3, that that is the very fulfilment of one's highest forensic dreams and aspirations; one felt at the very heart of the Piccadilly Circus of the legal scene. That fact indeed was forever confirmed by the number of people asking the way throughout the court corridors to the Master of the Rolls' court and by the size of the numbers of tourists sitting always at the back of it.

My Lord, it is perhaps some small indication of the affection in which your Lordship is held by the entire legal profession that there are so many of us in court today and so many more who would wish to get in but cannot. Rumours are rife that there are even some judges who have been seeking to impersonate ushers for gaining admission. My Lord, it is abundantly clear that, if entry were by ticket, the touts would be having a field day and tickets would be changing hands at black market prices.

My Lord, obviously we are impoverished by your going, but nothing like to the extent that we feel enriched by the many marvellous years that you have been here. Those of us privileged to have practised in your Lordship's era and still more those of us like myself lucky enough to have appeared frequently in your Lordship's own court will ever treasure that fact and continue to draw strength and guidance from it.

My Lord, we shall continue also, as will generations to come, to read your Lordship's judgments in the reports; and how refreshingly easy it is to read them compared to so many others. We shall recall that short sentences are best and that verbs are optional! (*Laughter*).

My Lord, as others have already rightly said, we shall of course miss you; but even that feeling is tempered by our hopes and, indeed, our expectations that we shall find you still amongst us in our newspapers (and one must include "Private Eye"), in our bookshops, on our television screens, and we trust above all in the precincts and the halls of the Inns of Court – now happily all four of them.

My Lord, we would particularly like to be thought worthy of inclusion amongst the "nice people" whom your Lordship has more than once said that you like to eat with and drink with before going to bed with a contented heart.

My Lord, we the Junior Bar most earnestly and sincerely wish you and Lady Denning well.

MR ASHE LINCOLN: My Lord Chancellor, it falls to me as the senior practising silk at the Bar to speak third, and I suppose it might be to the contentment of all present if I were to assert what I believe to be the privilege of the third member of the Court of Appeal and say, "I agree and I have nothing to add"; but in fact,

my Lord Chancellor, I feel emboldened to add a word or two to what has already been said.

I feel with respect, that I have a special privilege because it has been my happy fate during the course of my life to serve with members of the Denning family in two different disciplines; and I know that my Lord Denning will not mind my mentioning the fact that I had the very great privilege of serving in the Royal Navy with his very great brother Admiral Sir Norman Denning, who of course served his country so well that few realised that the very existence of the country really depended upon the magnificent work which he did for the Intelligence Service of the Royal Navy.

But the one outstanding characteristic which one always associates, if I may say so with respect, with the name Denning is the humane consideration that one always received from members of that family; not only with a great sense of public service, as exhibited by my Lord Denning to the law and as exhibited by Admiral Denning to the Royal Navy and by his other distinguished brother who served in the army, but also, as has already been pointed out, the humane way in which one could always rely upon my Lord Denning to approach every human being and every problem. One only had to come into the Court of Appeal when some of those litigants in person were appearing; and, whilst one might have been excused for chafing at the bit at the amount of patience that the Master of the Rolls was showing to the litigant in person whilst one was waiting to come on with one's own matter before the court, being anxiously required elsewhere, nevertheless patience was always shown, directions were given, and advice was tendered from the Master of the Rolls to the litigant in person. Never was his reaction infused with intemperance or impatience.

In my long experience at the Bar I remember so well my first appearance as a young junior in the Court of Appeal when the presiding judge was not of that patient temperament, and I had a very rough passage indeed. It made one appreciate all the more the kindness and humanity and benevolence of Lord Denning when he presided over the Court of Appeal.

So long as the common law exists, the name of Lord Denning will be revered and remembered not only in this country but throughout the world. I remember in the United States of America how greatly he is respected and how when I visited law colleges and law schools in that country I found that the students had embroidered their T-shirts with the words "Root for Denning". (*Laughter*). It occurred to me that it might be a useful garment to wear before the Court of Appeal! (*Laughter*). But, my Lords, it was only their way of expressing that affection which is felt for Lord Denning by the whole of the Bar.

My Lord, I join with those who wish you well in the future and much happiness in your retirement.

Valedictory speeches were also delivered by Mr John Platts-Mills, Q.C. on behalf of the Western Circuit, Mr Joseph Jackson, Q.C. representing the Family Law Bar Association and Mr Max Williams representing the Law Society.

THE MASTER OF THE ROLLS: Lord Chancellor, Mr Attorney, President of the Law Society, and friends all; it moves me much to see such a great gathering here of you all. I have known it longer than you, you know. I first came into this building 60 years ago. I got to learn the practice and procedure in the Bear Garden, as I hope you have! (*Laughter*). I learned my advocacy before juries, if you please – you do not have much chance. I cross-examined here. I sat as a judge here. I sat in the Court of Appeal. In fact, I know all about it! (*Laughter*).

I would remind you that this year this building has been here one hundred years. It was opened by Queen Victoria in the year 1882; and, if you want to know about it and you do not know your law reports, it is all reported in 10 Queen's Bench Division. But there you are. The Lord Chancellor, Lord Selborne, received the key of this building from Her Majesty, and in his address he included these words: "Your Majesty's Judges are deeply sensible of their own many shortcomings." I expect you, my Lord Chancellor, will know that Lord Justice Bowen (then a member of the Court of Appeal) said, "That ought to be amended, you know." (*Laughter*). "We are deeply sensible of one another's shortcomings." He was a great wit – not like some of us! (*Laughter*). That was one hundred years ago.

But now, my Lord Chancellor and all my friends, you know, you have spoken much too flatteringly. I speak to you as Oliver Cromwell spoke to Mr Lely: "Mr Lely", he said, "I desire you to use all your skill to paint my picture truly like me and Flatter me not at all. But remark all these roughnesses, pimples, warts and everything. Otherwise I will not pay a farthing for it." There it is. There are lots of roughnesses, warts and pimples. I know them perfectly well. So do the House of Lords! (*Laughter*).

There it is, you know; I have had my day, and I say on a parallel to Sir Isaac Newton:

"I do not know what the world may come to think of me, but for myself I like to think of myself as a small boy playing by the seashore, and here and then finding a smoother pebble or a prettier shell than the rest while the great ocean of truth lay undiscovered before me."

I may add, "while the great mass of our law lay unexplored."

Now, on this occasion, may I say how gratified I am that the members of the Bar all should be here in such numbers. If I may say so, it is my belief that oral argument is one of the essentials and best ways to a correct decision. It was William Temple who took the Christian precept of love and said it found its primary expression in society in justice. He went on to say that the way it is to be achieved is that each side should state its case as strongly as it can before the most impartial tribunal available with determination to accept the word of the tribunal. That is our system here – oral argument. I wish the sentiment which I have expressed also to be in the industrial field – that in the industrial disputes that there are each side should state its case before the most impartial tribunal with determination to accept the award of the tribunal. William Temple went on

to say: "For in that way the two parties are on a level, and they come nearer to the Commandment 'Thou shalt love thy neighbour as thyself.'"

So much for the Bar; but may I say also something of those Mr Max Williams has spoken so kindly for – all my friends amongst the solicitors of England and Wales. I always like to think that in a way they are the background, servicing the profession. They do not get all the publicity, notice and so forth which members of the Bar do. But – my word – they are of the very best. It is one of my proud duties that amongst my rolls is that of the Rolls of Solicitors. But I do like to say that they have and should have the command of language. I remember and like to give the picture of Walter Scott's in his *Guy Mannering*. The lay client, Colonel Mannering, goes into the lawyer's chambers, Counsellor Pleydell. When he goes in, he finds the walls lined not with law books, but with books of history and literature (the great authors), and on the wall a painting by Jamieson, the Scottish painter. Pointing to these books of history and literature, the lawyer says, "These are my tools of trade. A lawyer without history or literature is a mere mechanic; a mere working mason. If he have some knowledge of these, he may venture to call himself an architect", and that, if I may say so, either in giving judgment or in expressing it, I have tried – and I think it is equally important – to express oneself clearly so that all can understand.

In speaking to the profession as a whole, I would remind you of that great essayist Lord Bacon. "I hold," he said, "every man a debtor to his profession. As men of course do seek countenance and profit, so ought they as a duty to endeavour always" – as a duty – "to be an ornament and help thereunto." There is the profession by which I am surrounded here today, and I know you are ornaments and helps to your profession.

I would thank also at this time not only you. I would like to thank our law reporters – Mavis Hill who was in my court for so many years; Alan Bray now. You know, for any reputation we have, any standing we have, a great deal depends on the law reporters. Then there are our shorthandwriters who take down our hesitating words. Not only them, but our ushers – our staff. I have been privileged to have the best of clerks – John King, Ross Chesney and now Peter Post. You do not realise how much we owe all those; they are an essential part of all our work.

Now I have brought something to show you! (*Laughter*). A lady friend of ours, a Parsee, a member of Lincoln's Inn, has been our friend for years. On behalf of the community a case was decided by Lord Justice Ormrod and his colleagues in the Court of Appeal which won the approval of the Parsee community in Bombay; and she sent for the Court of Appeal this gift. I will tell you what she says:

"Here are seven elephants drawing a dainty silver carriage. The square piece on the rear of the carriage has the single word 'Justice' inscribed on it. All the elephants are engaged in the task of pulling the carriage of Justice along the narrow white path, the straight and narrow road." Then she says, after referring



VALEDICTORY SPEECHES

to the three pale brown elephants:

“The great white elephant has no tusks for he does not need tusks to do his work in Nature. This elephant’s mind and thought force power is so highly developed in Nature that he can do the work of spreading Justice and maintaining the Divine Law and Order among all souls . . . This elephant represents you, Lord Denning, (*Laughter*), as the greatest force for truth and Justice tempered with mercy, alive today.”

There they are then. I will leave it for you to keep this as a present to the court; but I laughed at her last wish:

“I wish you would place this figure in some room in the Law Courts building where all your Judges can see it, for it would serve as a constant reminder to them that Justice must ever be done, and the time may come in the future when the great white elephant may no longer be in their midst.” (*Laughter*).

The time has come. One gets older – I am 83 and my wife is 82 – we have carried on all this time. I have parodied Lewis Carroll:

“‘You are old,’ Master of the Rolls, the young man said,  
‘And your hair is getting very white;  
And yet you incessantly stand on your head –  
Do you think, at your age, it is right?’  
‘In my youth,’ the Master replied to his son,  
‘I feared it might injure the brain;  
But, now I am perfectly sure I have none,  
Why, I do it again and again’.” (*Laughter*).

I do not think I had better try standing on my head any more because there are lots of people to take care of me now.

But I would just like to say how moved I am, and how grateful I am to all of you for the wonderful support you have given us over the years – all my colleagues here on the Bench; all you at the Bar; all the solicitors, and friends everywhere. Thank you very much. I wish I could say, as a great man did once, “I fought a good fight; I finished the course; I have kept the faith.”