

Mr Justice Warren

Valedictory speeches from the Chancery Bar

18 December 2017, Court 17, Rolls Building

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(Chairman Chancery Bar Association)

May it please your lordship, can I say first of all what a pleasure it is to appear before your lordship, together with all the other judges here today, with some clear and straightforward instructions. This is an occasion where, in order to master my brief, I have not had to deal with the horrors of stamp duty land tax or some arcane points of charity law concerning poor relations. Rather, my lord, all I have been instructed to do is to wish your lordship well on your retirement. Those instructions may be clear, but they are of course tinged with sadness. The members of the Chancery Bar cannot believe that you are leaving us and retiring from the bench. After all it does not seem that long ago that you were standing where I am today as the Chairman of the Chancery Bar Association. My lord, we are all going to miss you.

Now, in this day and age, it is often customary to begin one's research for an event such as this by looking on Google. Well Google told me how old you were and where you went to school. Not much use in the present circumstances. Having said that, you will be relieved to hear that your lordship has never been described as a "top judge" and, from a judicial perspective, that must certainly be a relief. So without any help from "big data", I went for a much better source of information. The long memories of my colleagues in chambers.

Now today, we can see that your lordship is resplendent in traditional judges' robes and, if I may so, how magnificent you look¹. You may look traditional today, but in your youth at the Bar I have discovered you were quite an activist. In 1978 what was described to me as a "revolutionary text" was published call "The Bar on Trial". The dust cover tells the reader that "in this book, for the first time, a group of 8 barristers have broken a tradition of silence to speak out against the shortcomings and injustices of their profession". Your lordship was one of the contributors, together with the then James Munby and Helena Kennedy and others.

Your lordship's contribution was a penetrating analysis of the Inns of court and, at the end, your lordship took issue with the tradition at the Bar to ignore the difference between barristers and judges. Your lordship said this: "A judge is a barrister no longer, but a salaried official of

¹ Mr Justice Warren was wearing the red robes of Mr Justice Eve. He explained that they have been handed down by Chancery Judges over the years and he was given them by then Mr Justice Timothy Lloyd, and he is handing them on to the new Mr Justice Fancourt. The full-bottomed wig was his own.

the state; and his interests and concerns are very different from those of a busy self-employed professional man or woman. Certainly judges have wisdom and experience; so do all of those in other walks of life who have arrived at the end of their professional careers.” My lord looking at the now, that assessment seems somewhat harsh.

Your lordship has been on the bench for some 12 years and, during that period, your lordship has given so much to the legal profession. From your encyclopaedic knowledge and formidable expertise you have contributed in spades to the development of the many and various different aspects of the law heard in this Division, and also in the Upper Tribunal where you were the President of the Tax and Chancery Chamber for 6 years.

Of course, the areas of the law, where your lordship has been pre-eminent has been in pensions, tax and charity and it is in those matters where our members have longed to have their cases listed before you, and I am sure will miss you most of all. It has always been a pleasure to appear in front of you and, however dry the subject-matter, any hearing in your lordship’s court has always been approached not only with scrupulousness fairness but with good humour as well, and we have been very grateful for that.

My lord you were, as I mentioned earlier, the Chairman of the Chancery Bar Association. You were the brains behind the Annual Conference², which was devised to meet the then new requirements of CPD. That flagship event emerged, as I understand, as a result of your lordship’s idea of an away day – quite a novel idea at the time. The requirements of CPD may have changed, but the Conference lives on, as does the annual away day, and long may those events continue.

On a personal note, I have certainly valued your lordship’s wisdom, experience and friendship over the last few years. I was lucky enough to be allocated your lordship as my mentor when I was appointed as a section 9 judge. I shall never forget the guided tour you gave me of the judges’ side of the Rolls Building and, to this day, I am very grateful that I know where to find Doug.

My lord, I now that you have a hinterland well beyond the Rolls Building, whether it be music or high altitude trekking. We hope you find plenty of time to enjoy all those pursuits, and many more, and we wish you a long and very happy retirement.

Jonathan Gaunt QC

My Lord, this is positively the last time upon which I shall address an old friend in this feudal fashion. It is common knowledge at the Chancery Bar – indeed you told us all when you were appointed – that you do not like being “lorded” in either sense of the word. Very well. I shall endeavour to repress the sycophancy deeply ingrained in my psyche and speech patterns by 45 years of grovelling deference to Her Majesty’s Judges – and speak the truth to power.

² Mr Justice Warren said that Carolyn Walton should also receive credit for this event.

In 1970 a group of young men, imbued with that overweening confidence that is conferred by a sojourn among the dreaming spires, arrived in London bent on reading for the Bar. None of us had read anything as pedestrian as law. We had read difficult subjects – in your case maths and philosophy; in the case of others including myself, the Oxford Greats syllabus. After a year or two contemplating Fermat’s enigma or metaphysics in Ancient Greek we did not regard Donoghue v Stephenson as the great intellectual breakthrough our lecturers made it out to be. Ah, the callowness of youth. We had not yet learnt that what is difficult about the practice of law is not the concepts but the clients, that facts are governed by Heisenberg’s uncertainty principle – by the time you have got the measure of one, all the others have changed – and that English law is not (pace our friends on the Continent) a coherent intellectual system – it does not even try to be – but a compendium of pragmatic solutions to changing social circumstances; and all the better for it.

After navigating the Bar exams we were called by our respective Inns, managed to find benevolent pupil masters and prevailed upon our chambers to take us on. In those days chambers were not the all-singing, all-dancing behemoths they are today with hot and cold running receptionists, practice managers, chambers directors, marketing executives and twitterateurs. I believe you and I were the twelfth members of our respective little sets. Chambers then were typically staffed by a senior clerk who earned more than any individual barrister, an inarticulate boy and a typist who was always too busy to do the junior tenant’s work. The junior tenant was given a garret with a gas fire – and required to share it. In my case I was lucky enough to share with a beautiful lady who later became my wife. You got John Martin.

Mention of John reminds me of the elegant and witty welcome that he gave you on behalf of the Senior Bar when you were appointed to the Bench in 2005. I gathered from that that your practice had come largely to consist of giving comfort to errant trustees who had done those things they ought not to have done and left undone those things that they ought to have done and come to you for absolution, which you were, for a suitable fee, happy to give them, muttering over their suppliant heads the magic incantation “Hastings Bass”.

Even as the utility of my classical education declined with Sir Anthony May’s decree prohibiting the use of Latin in Court, your mathematical education was in the ascendant – you were one of the few members of the Bar who could understand the dark arts of the actuary and could therefore advise the trustees of pension funds.

History teaches us, however, that after the sale of indulgences comes the Reformation – in your case appointment to the High Court Bench and not long after as President of the Tax and Chancery Chamber of the Upper Tribunal. I shall not speak of the diligent and exacting work you have done in the latter capacity. That is not a figure of speech. I shall not speak of it because I know almost nothing about it and do not understand it anyway. What is apparent is the stream of your decisions on Lawtel, mainly about VAT, a subject to me, at least, of quite impenetrable opacity. All I can say, adopting the patois of the age, is “Respect”.

Nor shall I speak of your two famous contretemps, which caused so much innocent amusement at the Chancery Bar, the first with Peter Smith J and the second with the Pensions Ombudsman,

Professor Farrand. In both cases your good humour and courtesy contrasted with the spleen of those two notably splenetic gentlemen. That, of course, was a figure of speech, since I have now reminded everyone of both incidents.

Occasionally you have gone off piste, abandoning the icy, mogul strewn black runs of tax and trusts, into the soft, fresh, fluffy powder of property law which, as an expert skier, you negotiated with poise and confidence. Whilst still a deputy you decided Batchelor v Marlow and experienced, not for the last time I fear, a pang of irritation at being overturned by the Court of Appeal. Never mind. It may be of some comfort to you that, as far as I am aware (and as an editor of *Gale* I should be) the Court of Appeal's decision (though we cannot say it was wrong – whisper who dares) is never followed, is always distinguished and has been roundly repudiated by the Law Commission.

In the Field Common case you ventured once more into the law of easements, delivering a judgment on Wrotham Park damages described in a later case by the Supreme Court as “comprehensive and scholarly”, which may, I venture to think, stand as a description of all your judgments. In a case called Polo Woods you essayed the curious world of profits à prendre – a case which I have always suspected was erroneously listed before you on account of your mathematical background, because the clerk of the lists noticed that it concerned a triangle.

A Judge has to have his little eccentricities. It is expected. I gather that one of yours has been riding a bicycle down the Judges' corridors of the Rolls Building. I must say that I understand why. Something that has always irked me when sitting as a deputy was being made to walk from the Judges' entrance round three complete sides of the building to get to Court, a distance of at least 300 yards.

Another innovation of yours was your job share with Mrs Justice Proudman, an arrangement known to us sailors as hot bunking, but perhaps I had better not call it that in the present climate for fear of misinterpretation.

A spell on the Bench would be incomplete without at some stage engaging the attention of the Press. You managed to generate the somewhat startling headline – “*Judge says it's OK to say C*** in Court*”. That's OK, then, but it is forbidden to use Latin. *O Tempora, O Mores*.

Between John Martin QC's elegant and witty “Salve” and this my stumbling and inadequate “Vale” (oh dear, more prohibited Latin) you have entertained the submissions of the Chancery Bar with unfailing courtesy and good humour. All agree that it has been a pleasure to appear in your court.

I know that your retirement from the Bench will give you more time for your music, a career in which nearly kept you from the Bar in the first place. I hope too that you may find the time to sit on a gently rolling deck under the misty starlight of a Mediterranean summer's night and, halfway down the second bottle, reminisce like Falstaff and Master Shallow in the play how, long ago, in a perhaps insufficiently mis-spent youth, before a career of relentless application in the service of the law, you and I may once have heard the chimes at midnight.

As Shakespeare (him again I am afraid) put it:

*“As in a theatre the eyes of men,
When that a well graced actor leaves the stage,
Are idly bent on him who enters next,
Thinking his prattle to be tedious.”*

I am the one in danger of becoming tedious. It remains to wish you on behalf of the Bar a very happy and fulfilling retirement.

And please note, I have closed this address without once, after the opening words, calling you “My Lord” or “Your Lordship”.
