

MR JUSTICE FAN COURT

WELCOME SPEECHES FROM THE BAR

TUESDAY 16TH JANUARY 2018, COURT 17, ROLLS BUILDING

MISS AMANDA TIPPLES QC

(Chairman, Chancery Bar Association)

May it please your lordship, it is my great pleasure this afternoon to be instructed on behalf of the Chancery Bar Association to welcome your lordship to the Chancery Bench, and of course to congratulate your lordship on your appointment as a judge of this division.

The brief on these occasions is to keep the speech short, identify success and tell a story. My lord, you have some very loyal friends and colleagues, so telling a story may be somewhat of a challenge – so we shall see. As for brevity, well it is no understatement to say that your lordship has done so much both at the Bar and for the Bar, so I will stick to what I hope are my best points. However, what is of course striking is your lordship's undimmed levels of energy, enthusiasm and, quite frankly, dedication to all that you have done in your 30 years at the Bar and the fact you have done it all in a very modest and understated way, and always with unfailing courtesy.

Your legal career started at Caius or, to give it its full name, Gonville and Caius College, Cambridge, where you were taught by two legendary legal academics, Dr – now Professor – Len Sealy and Mr Michael Pritchard. It was Michael Pritchard, the then Senior Tutor and Director of Studies in law at Caius, who sparked your lordship's interest in the workings of property law.

You were called to the Bar in 1987 and, although obtaining a tenancy required perseverance (you are in good company – the same thing happened to the last President of the Supreme Court), your lordship started in practice in 1988 at what was then 11 Kings Bench Walk, and in due course became Falcon Chambers. By the end of 1988 your lordship had already been in the Court of Appeal, led by Derek Wood QC, with the then David Neuberger QC on the other side in what, I think, was your first reported case – *Wagle v Trustees of Henry Smith's Charity* – a case about a former sculptor's studio in Chelsea, and whether it fell with it the scope of the Rent Act.

The start of your practice at the Bar coincided with the commencement of Part I of the Housing Act 1988 and the birth of assured tenancies in January 1989, a topic about which your lordship wrote an invaluable textbook some years later. Your career flourished at Falcon Chambers, as your lordship dealt with all manner of property cases and disputes. You were a brilliant and exceedingly industrious junior, as well as a formidable opponent, and it was no surprise when you took silk in 2003. As a silk you have appeared in numerous important cases in the Court

of Appeal and, with *Scottish and Newcastle v Raguz*, you have an unbeaten track record in the House of Lords.

Your instructing solicitors must regard your elevation to the Bench as a tragedy. However, it is not just your instructing solicitors who will miss you. We at the Bar will also miss you. This is because, as I said at the outset, you have done an enormous amount for the profession. My lord, you were an elected member of the Bar Council for 3 years from 1996, you were the Chairman of a regulatory working group on the Legal Services Act at the BSB from 2007 to 2010, you were the Vice Chairman of the Chancery Bar Association for two years after that, and then our Chairman from 2012 to 2014. My lord, those are all time consuming roles. Further, it is not just the fact that you had those roles, it was what you achieved as a result of them, that is so important. I shall take three examples.

First, as your lordship once observed “increased regulation and consultations are seemingly unavoidable in the modern world” and we need to remain “vigilant and responsive to deal with threats as they arise”. It is your lordship’s detailed understanding of the regulatory framework that, over the years, has helped us to keep the BSB at bay. Second, in 2014 your lordship did not pull his punches in identifying publically the damage that legal aid cuts would do to the administration of justice in this country. Your lordship’s pithy, robust and accurate analysis turned you into an instant hero of the Criminal Bar, something which was certainly a first for a Chairman of our Association, and of which we are very proud. Third, the CLIPS scheme was started under your chairmanship and, in championing the scheme, you were its first volunteer. I am told you were landed with some fiendishly complex case about domain names on a pay day lending site. I think your lordship wisely got it adjourned until the next day and your then Vice Chairman, Penelope Reed QC, dealt with it. There are many other things that you have dealt with on our behalf, and for which we are all very grateful. But I will stick to those points for the present.

Your judicial career started in 2009 when you were appointed as a Recorder in the Crown Court, and you have regularly sat at Harrow Crown Court. You were appointed as a Deputy High Court Judge in 2013 and you have already been dealing with the full range of cases seen in this Division from probate to pensions and, of course, property too. Your unblemished record in the highest court in the land remains intact as, in November last year, in the case of *Tiuta International Ltd v De Villiers Ltd*, your decision on damages was upheld, the decision of the Court of Appeal overturned, without you having to say anything at all.

Finally, as for stories, I approached your now former Head of Chambers, Mr Fetherstonhaugh QC, for some snippets of information. He told me that Falcon Chambers jealously guard its snippets. So I turned to sources closer to home.

Now, my lord, your involvement in the famous, or should I say infamous, *Paribas* litigation may be regarded as having killed off rent review arbitrations in the 1990s. Well, that is what Mr Gaunt QC suggested to the Lord Chief Justice yesterday. I may not be a member of Falcon Chambers but in the mid-1990s when this case was going on, we heard about the latest twists and turns in tea every day at 13 Old Square from your learned leader, Hazel Williamson QC. And that was a lot of teas.

Now, my lord, there are two things that your leader remembers from that case that I can share here today. The first is that as the case ground on, and on, your lordship was able to raise the morale of your side by giving one of the other side's fashionable experts who had, and I quote, "devised a spuriously scientific scheme for comparing buildings" such an apt nickname that she was unable to remember his real name, and proceeded to use the nickname – which I had better not repeat – in her submissions. The other was your lordship's sense of the theatrical. In that case, your lordship was given the rather boring job of cross-examining the minor technical experts. One such expert was a lift engineer, who was opining about the deficient speed with which the buildings of the lift door would close – such was the nature of the arbitration. He was apparently very dogmatic indeed, which prompted your lordship to fish dramatically under your desk and produce, and then brandish, a long chrome tube and, at the same time, say in a loud voice: "Have you never come across one of these?". To those in the know it was a pressure bar – to measure the pressure of closing lift doors – but to everyone else, the way the long chrome tube caught the light, you were a Jedi warrior, and this was a lightsabre from Star Wars. The witness jumped back in his seat and, as for the arbitrator, he certainly woke up instantly. I would like to think we can all picture the scene here today.

It is lovely to see your daughter Agatha here with your wife Emily. My lord, we know you have your feet firmly on the ground, but if there was any doubt (which we know there isn't), at home I happen to know that the most important judge in the Fancourt household is Head Judge Shirley and, although your lordship has penchant for Wagner, some members of your household actually cast votes in *Strictly Come Dancing*.

I have just mentioned Jedi swords. I know that one of your daughter's concerns about your new job is that, when you go to Buckingham Palace to become Sir Tim, she is worried about how sharp the Queen's sword will be. Well, my lord, here at the Bar we certainly hope it is not too sharp. We regard ourselves as extremely fortunate that your lordship has been appointed as the new judge in this division, and we wish your lordship well in the next stage of your already outstanding career. My lord, welcome.

MR GUY FETHERSTONHAUGH QC

May it please Your Lordship, I appear initially for myself, as a Litigant in Person. I did ask my learned friends here for a little help with my application, but I am afraid that Your Lordship's CLIPS was a fat lot of good.

My application to Your Lordship is to be released from the undertaking Your Lordship extracted from me some time ago, when Your Lordship told me of his judicial intentions, but made me promise to tell nobody.

My Lord, I kept my word – but it appears that others did not. Indeed, when Your Lordship came out to Chambers last month, he said in his email "Absolutely no one has treated my appointment as secret except me. It appears that various people were talking about it quite openly from August onwards!"

With the greatest of respect, I'm not sure that Your Lordship is right in saying that he himself kept the secret. Your Lordship may recall sitting with his daughter Agatha in the Albert Hall in the autumn when my similarly musically inclined learned friend Jonathan Small QC approached to say well done to the talented Agatha for passing her Grade 6 piano. Upon Mr Small uttering the words "I believe congratulations are in order", the following words fell from Your Lordship's lips: "For heaven's sake, can nobody keep a secret?" Your Lordship had then to explain to the troubled Mr Small the nature of Your Lordship's misapprehension – and so the floodgates opened.

My Lord, I turn now to more general matters, and believe that I speak with the authority of the whole of the Chancery Bar. Your Lordship's Christmas email to us in Chambers read: "Happy Christmas to you all - don't let Guy spend it working on his speech for my chancery welcome ceremony: the less said about my previous indiscretions the better". Well, My Lord, although we in Chambers have every intention of complying with Your Lordship's orders in the future, I'm afraid that contrary to Your Lordship's order, the Chambers indiscretion industry redoubled its efforts.

My Lord, I must say, virtually without result. Disappointingly, Your Lordship has left behind him no skeletons, save those found in bundles; no betises; no peccadillos. Accompanying his glittering career at the Bar, to which I now turn, there has been no hint of opprobrium.

As was customary 3 decades ago, Your Lordship served two pupillages. The first six was at 4 Stone Buildings, where Your Lordship's pupil masters (as they then were) included one of Your Lordship's new brethren, Mr Justice Hildyard, whose welcome speech on a similar occasion Your Lordship himself gave. It is with profound regret that I remind Your Lordship that, at the end of that 6 months, 4 Stone Buildings recruited 3 of their 5 pupils but not Your Lordship. Possibly expecting better luck next time, Your Lordship went then to 13 Old Square for his second six, where his pupil masters included Michael Briggs. At this set, Your Lordship was the only pupil, so Your Lordship might have felt justified in thinking that things were looking pretty good. But to Your Lordship's great surprise, the summer vacation arrived and the whole set went on holiday without convening a chambers meeting - which seems to have been the way they rejected people.

Shortly thereafter, 13 Old Square received a letter notifying it that our set was asking if they had any decent pupils. Michael Briggs greeted the letter with what Your Lordship might have thought was inappropriately indecent enthusiasm, passed it to Your Lordship and advised him to apply. At that stage, therefore, Your Lordship turned his gaze away from the hallowed precincts of Lincoln's Inn, towards the murky zone south of Fleet Street, wherein lies the Temple. In doing so, Your Lordship followed in the footsteps of those other pupils whose pupillage Chambers had deemed in their judgment not to have a promising career at the Bar, My Lord Lord Neuberger, My Lord Lord Justice Lewison, and My Lord Mr Justice Morgan.

Your Lordship joined Chambers as the next but one junior tenant to me. But whereas I was already of advanced years, Your Lordship was I think only 13. Before long, Your Lordship picked up the first of many accolades from the courts in which Your Lordship practised. I have managed to locate only two, but I know that there were many more.

From: The Rt Hon. Sir Thomas Bingham



ROYAL COURTS OF JUSTICE
STRAND, LONDON, WC2A 2LL

Telephone: 071-936 6002
Fax: 071-936 7475

9 February 1993.

Dear Parcourt,

Ward. Lee

We all thought your skeleton argument in this case was a model. We were also much impressed by your able and polished oral argument. Well done.

Yours ever

Tom Bingham.

From: The Rt Hon Lord Justice Millett



ROYAL COURTS OF JUSTICE
STRAND, LONDON, WC2A 2LL

10th. November, 1995

Dear Fancourt,

I should like to congratulate you on your presentation of the argument this week in Metropolitan v Bondolomew. It was wholly admirable - concise, clear, well thought out, and not a word wasted. I admired the way in which you coped with a complete change of attack.

I should like you to know that my views are shared by the President and O'Hare L.J. We all hope to see you often in front of us.

Yours sincerely,

Peter Millett

Your Lordship's wife Emily – whose birthday it is today; Happy Birthday, My Lady - who dug up these letters for me from volume 18 of Part I of Your Lordship's scrap book "Fancourt: the Early Years", said: "If you would like some balance, I can offer you some unflattering school reports - not to mention a dreadful grade 2 piano report (he failed it)!" – but My Lord, I don't feel that it would be right to descend to that sort of level of personal abuse.

My Lord, I have personal experience of Your Lordship's practice at the Bar, because some of it was against me. With one exception, all of it ended in failure for me and triumph for Your Lordship. The one exception was a case decided by Mr Justice Lewison, which I won on a point which I had neither pleaded nor argued, and spotted only when judgment was given.

Your Lordship's career was not merely marked by success in advocacy. Your Lordship also wrote good books, taking over from Sir Robert Megarry the principal authority on the Rent Acts, and writing a book on the Landlord and Tenant (Covenants) Act 1995 that was so erudite that some of us in Chambers seriously considered writing a companion guide explaining Your Lordship's words of genius. And so it was that Your Lordship took silk at I think the age of 19, and went on to bigger and better things.

But there is more to Your Lordship than law – and I mean not to refer to Your Lordship's success in the Falcon Chambers Glenlivet putting competition in 2002, to which the Lord Chief Justice referred with such incredulity at Your Lordship's inauguration yesterday. I turn to Your Lordship's more adventurous extra-curricular activities. These are almost all very fine things: music, wine, food – but curiously enough, not art. If I may be frank, My Lord, all your pictures are horrible. I once detected what appeared to be the backing off a washing up sponge in one of Your Lordship's mixed media canvases. I asked Your Lordship if the sponge was part of the picture, or had been left behind by what some might laughingly call an artist, when cleaning up. I regret to say that Your Lordship's answer was not wholly convincing.

Your Lordship's interest in and knowledge of these finer things is quite startling. Three examples will suffice. I well remember having a conversation with Your Lordship about the Alto Rhapsody. Your Lordship mused about the emotional turmoil in Brahms' life, and the extent to which that had translated into the tenor roles. I had always just thought it beautiful music. There again, I recall Your Lordship extolling the virtues of a particular dish. Vegetarians will please find a safe space. Your Lordship noted, after a meal together, that the coq au vin was particularly good, because the chef had obviously included the liver in the sauce, which was satisfyingly grainy. I had just thought that it was good scoff. And then thirdly it was my pleasure to be introduced by Your Lordship to the wines of the Clare Valley, Your Lordship remarking upon their blend of cabernet sauvignon and cabernet franc. Yes, good plonk, I thought.

Your Lordship's demonstrably heightened pleasure in these things that lesser people simply regard as fuel for the body or the soul is not disseminated in order to impress. On the contrary, Your Lordship always flatteringly assumes an equal degree of knowledge in the listener. It is one of the many nice features of Your Lordship's personality. Above and beyond these earthly matters, Your Lordship is a man of deep principle, and has long been the soul and conscience of Chambers.

My Lord, we in Chambers will greatly miss Your Lordship's very fine company, but we have as our compensation the fact that Your Lordship's talents will now be on show to a wider world, while of course the fact that Your Lordship's wife Emily remains with us in Chambers will ensure that we keep in touch. But My Lord, I am also flattered to speak on behalf of the whole Chancery Bar, who join with me in wishing Your Lordship a long, distinguished, and above all, happy judicial career.

ELIZABETH FITZGERALD

This speech on behalf of the junior bar was "for the moment", and not for publication after the event.