

LORD JUSTICE KENNEDY

1846-1915

THE sudden death of Lord Justice Kennedy on the morning of Sunday, January 17th, deprived a wide circle of friends and admirers of one who, in addition to his professional eminence, was an accomplished scholar and a charming personality.

William Rann Kennedy, born on March 11th, 1846, was the eldest son of the Rev. W. J. Kennedy, Vicar of Barnwood, Gloucester, and winner of the Porson Prize at Cambridge, previously won by his three elder brothers, each of whom had also been the Senior Classic of his year. The future judge, after passing from Eton to a scholarship at King's College, continued the family tradition by accumulating University scholarships and medals, and by taking his degree, in 1868, as Senior Classic. He obtained a Fellowship at Pembroke College, entered at Lincoln's Inn, and, while a student there, was for a time Mr. Goschen's private secretary at the Poor Law Board. In 1871 he was called to the bar, and, joining the Northern Circuit, soon acquired a large practice as a 'local' at Liverpool. Returning to London in 1882, he took silk in 1885, and was engaged especially in commercial and Admiralty cases. He was unsuccessful in parliamentary contests at Birkenhead in 1885 and 1886, as also at St. Helens in 1892, but in the last-mentioned year was nominated by Lord Herschell to a judgeship in the King's Bench Division. His promotion to be a Lord Justice of Appeal took place in 1907. On the bench, as at the bar, his strength was best, though by no means exclusively, displayed in commercial and shipping cases.

The present is hardly a suitable occasion for dwelling upon the technical points involved in the cases with which his name is most commonly associated, but I will just mention a few of these. He was counsel in *Cooke v. Eshelby* (12 App. Ca. 271), on a question of agency; in the collision case of *The Ocean Steamship Co. v. Apar & Co.* (15 App. Ca. 37); and in *Shaw Savill & Co. v. Timaru Harbour Board* (ib. 429), on the liability of a pilot. As Judge of the High Court, he had to do with the first stage of the Trade Union controversy raised by *Flood and another v. Jackson and others* (1895, 2 Q. B. 21),

which developed into *Allen v. Flood* (1898, A. C. 1); his judgement on a point of the Conflict of Laws in *Ridson Iron Works v. Furness* (1905, 1 K. B. 304) was affirmed on appeal; and his decision in *Ashby's Cobham v. Ashby's Staines, Brewery Companies* (1906, 2 K. B. 754) became well known in discussions upon the Licensing Act, 1904, as the 'Kennedy Judgement'. As Lord Justice, he put clearly in *Ex parte Sekome* (1910, 2 K. B. 576) that a protectorate is no part of H.M. dominions; and in *Clemens Horst Co. v. Biddell Bros.* (1912, A. C. 18), as to liability for payment against shipping documents, the House of Lords unanimously reversed the majority judgement of the Court of Appeal, adopting the dissenting opinion of Kennedy L.J., which was characterized by Lord Loreburn C. as 'that remarkable judgement, illuminating, as it does, the whole field of controversy'.

Kennedy's main contribution to legal literature was a much-needed treatise upon *Civil Salvage*, published in 1891, for the second edition of which, published in 1907, his son, A. R. Kennedy, seems to have been solely responsible. But he was also the author of valuable monographs upon topics to which his attention had been especially directed; e.g. a paper, read at the St. Louis Exhibition Congress, of 1904, upon a question of the Conflict of Laws (*Journ. Comp. Legisl.* xiv, p. 106), and papers upon 'private property at sea', 'contraband' (*L. Q. R.* xxiv, p. 59), and 'blockade', written for meetings of the 'International Law Association' held in 1903, 1907, and 1908. Kennedy long played a leading part in the gatherings of this useful body, frequented, as they are, by ship-owners and insurers as well as lawyers, and he presided over its meeting at Buffalo, U.S., in 1899. He also shared the Presidency of the Committee which works for the unification of Maritime Law, at Liverpool in 1905, and at Hamburg in 1909. It was only fitting that in 1910 he was elected 'associé', and in 1913 was promoted to be 'membre', of the 'Institut de Droit International'. He had, however, never lost touch with the studies of his youth, and in 1912 published an admirable translation into English verse of the *Plutus* of Aristophanes, describing it as 'the pleasant work of leisure hours', and expressing a hope 'that some sparks of Aristophanic wit may be found to lie among the ashes of translation'.

Remarkable tributes were paid to Kennedy's varied merits in the full Court of Appeal, on January 19th, before the delivery of an important judgement in the case of *Porter v. Freudenberg* (1915, 1 K. B. at p. 866), in the preparation of which he had taken an active part, dealing with questions as to the civil rights of alien enemies. The Lord Chief Justice, in putting on record the appreciation

by the whole Court of Kennedy's 'life, his work, and his genius', alluded to the already richly stored mind with which he had come to the bar, and said that as a judge 'his most dominant characteristic was his conscientious devotion to duty and his high conception of the duty of a judge, accompanied by a rare modesty and diffidence, which sometimes misled those who little knew the depth of his learning and knowledge'. He spoke of him as 'ever courteous, ever ready to listen, ever anxious to do justice to a cause', adding that, 'as a man, those privileged to know him esteemed and respected him highly. Those who were nearest to his fellowship have the warmest affection for him. His was a most lovable temperament, generous, ever chivalrous, so generous that at times he found it difficult to believe that men could be mean in their views of life.' The Attorney-General described him as 'a scholar, bearing a name revered by scholars, who never made a parade of his scholarship . . . known as a commercial lawyer who had done as much as any one of his time to show how the practical solution of practical problems was best attained by the study and application of first principles'.

Kennedy had married in 1874 Cecilia Sarah, daughter of the late George Richmond, R.A., who survives him, as do three sons, the eldest of whom is following in his father's footsteps on the Northern Circuit, and one daughter.

The deceased judge was an honorary Fellow of Pembroke College, Cambridge, and honorary LL.D. of the Victoria University. In 1909 we had the pleasure of welcoming him into the British Academy, which to-day mourns the loss of so distinguished a Fellow.

T. E. HOLLAND.