

SIR COURTENAY PEREGRINE ILBERT, G.C.B.

1841-1924¹

COURTENAY PEREGRINE ILBERT was an eminent example of that kind of Englishmen to whom, about half a century ago, our profession and the public service looked for their best recruits. Moreover, he was a typical University man, and representative not only of Oxford but of the special variety of Oxford training which Jowett brought to a singular perfection in Balliol. The foundations of Ilbert's scholarship were laid at Marlborough, and his list of University distinctions is conclusive proof that they were well laid. At Oxford he perfected his knowledge and developed his faculties under a guide whose genius in that kind was almost unique. Jowett did much to diffuse scholarship, but he was not a great scholar; much to promote liberal thought, but he was not a great thinker; much excellent work in administration and affairs, but there were others who excelled him in mastery of University business. In one art he was without a rival, that of fitting his pupils to make the very most of their capacities, and not only to be but to appear all that they were worth. Not that such a man as Ilbert could fail in any case to leave his mark on the work to which he set his hand. But Jowett's disciples went forth into the world with a peculiar stamp of complete and active readiness, not without envy from competitors to whom their success had an element of mystery. Certainly none of them did more credit to his master than Ilbert.

The School of *Litterae Humaniores* at Oxford was at that time in its golden age: history, law, economics, and other modern studies were only beginning to assert their claims. Ilbert achieved all that could be achieved in classical honours, became a fellow of Balliol, and continued for some time in residence. He served his college as Bursar, and thus acquired valuable experience in the conduct of affairs. Thus he came to London and was called to the Bar at a rather more mature age than usual. I was only two years junior to him in professional standing, and we were both young at the Bar when we first made

¹ See note on p. 445 for dates of offices, &c.

acquaintance. He was already intimate with James Bryce, who, if I remember right, introduced me to him. In 1872,¹ Bryce, Ilbert, and Aeneas Mackay made an expedition to Iceland with mountaineering intentions which could be executed only in part by reason of difficulties about transport; such is the common experience of explorers in unfrequented regions. Their stay was accidentally prolonged for a month by missing a return steamer. Bryce's disappointment as a climber was mitigated by the interest he found in studying the very curious history of Icelandic medieval law and custom, a study which bore good fruit later. Ilbert did not continue to keep abreast of Bryce as a climber, but he was an active walker, at any rate, until his old age.

So far as I know there was only one conspicuous appearance of Ilbert's as counsel. This was in the case, then celebrated, of *Hayman v. Governors of Rugby School*, L. R. 18 Eq. 28 (1874). His leader was the late Lord Justice Cotton, his companions Davey and Bowen, then rising juniors. Vice-Chancellor Malins decided in a lengthy judgement, with ostentatious reluctance and much irrelevant comment on Dr. Hayman's grievance, that the Public Schools Act meant what it said when it enacted that the Head Master should hold office at the pleasure of the Governing Body. There was no appeal; University Liberals were well pleased; and Dr. Hayman was consoled with a very good living. In those days, it may be noted, the able young men from the Universities were almost all of the Liberal party. Ten years later they were almost all Tories. Nowadays the connexion between parliamentary and academical parties has become less close among residents, and it might be difficult to find such well marked majorities. Much of the preliminary work in preparing this case must have fallen upon Ilbert, and his zeal, which I well remember, was no less political than professional.

Such a beginning might well seem to presage the regular course of a Chancery barrister who came from Oxford as a brilliant scholar: a distinguished practice, Parliament or an appointment as junior Treasury counsel, a seat on the Bench, and at last a share in the supreme authority of the House of Lords and the Judicial Committee. It was the apparent line of greatest attraction and least resistance. Davey and Bowen followed it, and somewhat later Farwell and Parker. But Ilbert's bent was already for administrative rather than forensic work. He was engaged in parliamentary drafting, and in

¹ In 1874 the *Alpine Journal* (vii. 50) published 'Stray Notes on Mountain climbing in Iceland. By James Bryce': the date, not there given, is now communicated by the Warden of New College.

particular giving substantial assistance, though without any official position, to the Parliamentary Counsel's department, when in 1882 he finally left practice in London to take the post of Legal Member of Council in India. The Legislative Department was not then, as it has been since, engrossed by routine business or distracted by political controversy. Not that Ilbert escaped an acute controversial episode. The so-called Ilbert Bill had been (as I learnt from Sir Henry Maine) waiting for some time in a pigeon-hole as a harmless little reform in criminal procedure which might be put through whenever occasion served. But the proposed extension of Indian magistrates' jurisdiction over Europeans alarmed the timid, ignorant, and suspicious class of British merchants, clinging to 'the tradition that India existed chiefly for them to make money out of'¹ who called themselves the Anglo-Indian Community. There was a storm of opposition both in Calcutta and in London; a chief agitator against the Bill here was Townsend of the *Spectator*, formerly of the *Allahabad Pioneer*, who went about with a nightmare vision of some British soldier shooting an Indian country judge on the bench. He was an able and eloquent but flighty publicist; Sir Henry Maine once said to me of him 'I never knew a man with so much information whose judgement was so uniformly wrong'. The storm was lively while it lasted; the end was a compromise, and the far more serious problems of policy that have since arisen have, I suppose, caused the Ilbert Bill controversy to appear, so far as it may be remembered at all, a storm in a tea-cup. Ilbert, at any rate, did not lose his head over it; he suffered nothing in reputation and was not prevented from attending to weightier matters.

One such matter was the framing of a Bill to codify the law of civil wrongs. There were practically no indigenous materials, and the working law consisted, as it still does, of English case-law applied by the Indian Courts. Ilbert instructed me to draft a Bill, and I was in frequent communication with him on various points. Maine had pronounced codification urgent. But such, it appeared, was not the general view of Indian judicial or executive officers; and there were one or two serious questions of policy on which the Government of India would have had to make up its mind by reason of local difficulties, or of English law being still in an unsettled condition. The draft code was never brought forward, still the work was not barren. It laid the foundations of a book of my own which the profession has been pleased to approve; and the draft, published as an appendix to that book, is still found useful by Indian practitioners, I have been credibly told, as an unofficial digest of the principles and leading con-

¹ Hon. John Fortescue, *Wellington*, p. 23.

ceptions. Later Ilbert contributed to the *Law Quarterly Review* (v. 347) a clear and useful article on the whole topic of Indian Codification. This is not the place to consider his more special work, such as the Bengal Tenancy Act, even if I were competent in that field.

On his return to England Ilbert promptly found a congenial post in the Parliamentary Counsel's Office, with whose work he was already well acquainted, and there he worked first under Sir Henry Jenkyns and then as chief till he became the Clerk of the House of Commons in 1902. He was also Chairman of the Statute Law Committee, whose useful operations are a mystery to the lay public, not too well understood by the majority of lawyers, and unheeded by party politicians for whom showy new legislation, often spoilt by haste and improvident compromise, is more attractive than the weeding out and consolidation of the old.

Thus it happened to Ilbert, as to most public servants, that the greater part of his labour and skill was devoted to producing or shaping results which, by the very nature of the process, could only be anonymous in their published form. He was able, however, to put his name to two individual works of high excellence, *The Government of India* (1898, 2nd ed. 1907) and *Legislative Methods and Forms* (1901). 'Both books are quite the best upon their subject-matter', said the author of a concise but very well informed and sympathetic obituary notice in the *Solicitors' Journal* (vol. 68, p. 625), and it was not too much to say. Concerning the last-named work I may repeat what I wrote at the time (*L. Q. R.* xvii. 325): 'This book will now be the standard authority for every one who wants to know the natural history of a Bill in Parliament from the first sketch in the Parliamentary Counsel's Office till it receives the King's assent, or to know how things are done in India and the Colonies, or to estimate the progress we have made in improving the form of our written law, or to consider what amendment of our methods is desirable and possible.' The contents of these books are, of course, almost wholly technical; but their lucid style and orderly arrangement are the achievement of a scholar who never forgot the humanities even when he was wrestling with refractory matter. What Ilbert might have done in a less confined field of literature may appear by his obituary notice of Sir A. Lyall in vol. v of the 'Proceedings' of this Academy, his Romanes Lecture on Montesquieu (1904), and his review of Leslie Stephen's life of Fitzjames Stephen in the *Law Quarterly Review*, xi. 383.

When Ilbert became Clerk of the House of Commons, he had nothing to learn of constitutional law nor of parlia-

mentary drafting: the details of procedure regulated partly by the standing orders and partly by the unwritten tradition of the House itself were, however, not familiar to him. That familiarity, indeed, is gained only by long experience either as a member or as an officer of the House. Therefore he did not acquire such a reputation for technical mastery as was enjoyed by some of his predecessors; but he performed his duties with unfailing dignity, tact, and courtesy. He retired in 1921 with well deserved honours after nearly twenty years service.

In the last years of his term of office as Parliamentary Counsel, Ilbert was an original member of this Academy and with Lord Bryce and Sir William Anson took a leading part in settling the instruments by which we are governed. They have been found to need only slight addition and modification in a quarter of a century.

Through this long career of successful and uniformly excellent achievements Ilbert's accomplishments were wholly free from ostentation, and its one controversial episode was none of his own making. Such an example deserves not only to live in remembrance but (which is more) to be fruitful in emulation.

FREDERICK POLLOCK.

Note of Dates.

Born	June 12, 1841
Called to the Bar	1869
M. Jessie, daughter of Rev. C. Bradley	1874
(The eldest of his five daughters m. the Rt. Hon. H. A. L. Fisher, now Warden of New College.)	
Legal Member of Governor-General's Council	1882
Assistant Parliamentary Counsel	1886
Parliamentary Counsel	1899
Clerk of the House of Commons	1902-1921
K.C.S.I. 1895, K.C.B. 1908, G.C.B. 1911.	
Died	May 14, 1924

For the titles of publications not mentioned in this notice see the catalogue of the London Library.