

PLATE XXIX



Photograph by Pearl Freeman, 1945

SIR CARLETON ALLEN, M.C., Q.C.

SIR CARLETON KEMP ALLEN

1887-1966

A BIOGRAPHY of C. K., as he was known to all his friends and to many law students, must inevitably be inadequate because it can only list the remarkable number of his activities; it cannot give a true picture of the influence he exerted as a scholar, as Oxford Secretary to the Rhodes Trustees and as Warden of Rhodes House, as an impassioned defender of individual liberty, and as chairman of the magistrates in the City of Oxford.

He was born in Carlton (Melbourne) on 7 September 1887, the youngest son of the Revd. William Allen, a Congregational minister; his grandfather, a civil engineer, who had been born in England, had emigrated to Australia about 1850. His mother, Martha Jane Holdsworth, of Yorkshire stock, was born in Maryborough, Victoria.

In 1890 the family moved to Sydney, New South Wales, where his father was for many years the minister of the flourishing Congregational Church in the suburb of Petersham. His two elder brothers adopted the academic vocation—E. W. Allen, who was for the greater part of his life Vice-Master of Ormond College, University of Melbourne, a highly respected and popular teacher of the Classics, and Dr. Leslie Holdsworth Allen, of Canberra University College, who was a specialist in Classics and in English Literature, a writer, and a poet.

C. K. was educated at Newington College, Sydney, and at the University of Sydney where he obtained honours and prizes in Classics and in English. In 1909 a turning-point in his life came when he was awarded a travelling scholarship and entered New College, Oxford. (When C. K. was appointed Warden of Rhodes House in 1931 it was generally, but mistakenly, believed that he had been a Rhodes Scholar.) He read law under the late Francis de Zulueta, who later became Regius Professor of Roman Law. He was awarded a First Class in the Honours School of Jurisprudence in 1912. He attributed this in part to the sound training in Latin which he had received in Australia as it naturally was of great assistance to him in his study of Roman Law.

While he was at Oxford C. K. was particularly active as a member of the O.U.D.S. (the Oxford University Dramatic Society). In 1913 he produced and played a leading part in Dekker's *Shoemaker's Holiday*. He had several offers to go on the stage professionally and he had serious thoughts of doing so, but he decided against it. Perhaps he did not care enough for applause: he never sought the limelight although he could have achieved it throughout his life if he had wished to push himself forward. He was also interested in play-writing, and in 1914 he had two plays produced at the Gaiety Theatre, Manchester, but they fell dead on the outbreak of the war.

During his Oxford days his resources were very small as the scholarship which he received from Sydney University was insufficient for subsistence and had to be eked out by various means, including regular journalism for a Sydney newspaper. This proved to be of permanent advantage to him as it helped to mould the clear and vivid style in which his law books were written. He was probably the first English legal author who dared to be witty.

After taking his degree C. K. worked under Sir Paul Vinogradoff, who had succeeded Sir Frederick Pollock as the Corpus Professor of Jurisprudence. He was his secretary and assistant, and helped to prepare several of his books, including his best-known work *Historical Jurisprudence*, for the press. He also did some teaching for New College as in those days there were very few Law Fellows at Oxford so that much of the teaching was unofficial. In 1914 he was an unsuccessful candidate for an All Souls Fellowship, thus following in the footsteps of Sir William Holdsworth and F. E. Smith, later the Earl of Birkenhead, who also failed to be chosen. He was, however, awarded the Eldon Law Scholarship in that year, and intended to go to the Bar in England, when the war broke out.

He was rejected for military service, but after an operation he was passed fit and obtained a commission in the 13th Middlesex (Service) Bn., joining it in January 1915. Almost immediately after it had landed in France the 24th Division, to which his Battalion belonged, was thrown into the Battle of Loos and suffered severe losses. He was wounded during the attack on the notorious Hohenzollern Redoubt. While he was on sick leave he made a visit to Australia. He rejoined his Battalion in February 1916 and continued to serve with it on the Western Front until the end of the war. The Battalion took part in practically every major engagement on that battle front. He was wounded again

on the Somme in July 1916. He was made a captain and adjutant of the Battalion, and so remained until demobilization. He was awarded the Military Cross during the retreat in March 1918. One of the remarkable things about C. K. was that, although he had had a splendid military record and was highly regarded by his fellow officers, he hardly ever spoke about the war and never about the part he had played in it. He did his military duty, but it may have been his religious upbringing which made him dislike killing even his enemies.

On demobilization he was appointed lecturer in law at University College, Oxford. He had been called to the Bar by Lincoln's Inn in 1919, but he decided not to practise. He would undoubtedly have achieved an outstanding career at the Bar as he was a sound lawyer and a most persuasive speaker, but his real enthusiasm was for the academic life and legal scholarship. He was elected Stowell Civil Law Fellow at University College in 1920. He was appointed Dean in 1922 and held this post until 1926. He was Junior Proctor in 1924-5. In that year Austin Lane Poole was the Senior Proctor. Those posts can rarely have been held simultaneously by two more distinguished men.

On his return to Oxford after the war he became Senior Treasurer of the O.U.D.S. In 1921 he produced and played Jaques in *As You Like It*, inaugurating the summer productions that have become a standard feature of the Trinity term. He became a member of the founding committee of the old Oxford Playhouse, directed by J. B. Fagan, where various actors, who afterwards became well known on the stage, began their apprenticeship. He may be said to have played an important part in establishing the relationship between the University and the theatre which has proved to be of value to both. Less successful were his brief careers as a dramatist and a novelist. In 1925 he wrote a light comedy *The Judgement of Paris* which was accepted for production in London, but, to his intense annoyance, never got any further. He then converted it into a novel which was published by the Bodley Head. It did reasonably well as a first effort both in England and in the United States, but anyone who reads it today will not be surprised that the publishers failed to encourage him to write a second one. In one of his enjoyable after-dinner speeches he pointed out that Oxford law professors had not been as successful in the field of literature as they had hoped to be, as Sir William Blackstone, the greatest of all law professors, also had been disappointed in the reception which his poetry received. C. K. was more fortunate as a critic;

for some fifteen years he wrote two (for a time even three) weekly 1,500-words book articles for the *Illustrated London News* and the *Sketch*, under a pseudonym.

In 1926 he went to India for six months to deliver the Tagore Lectures in Calcutta. This proved to be another turning-point in his life because these lectures formed the foundation of *Law in the Making* which was published by the Clarendon Press in 1927.

When *Law in the Making* was first published it contained 377 pages. In the Introduction the author rejected the Austinian idea of law as a command which, as he emphasized with many apt citations from English legal history in which he was an expert, was in conflict with the basic principles of the common law. His main thesis was 'that the study of the sources of law cannot be approached with the preconception that they are derived from a single origin, the sovereign' (p. 24). He then dealt with custom, precedent, equity, legislation, and subordinate and autonomic legislation as the five main sources. In the six succeeding editions the book has grown to 632 pages, as new ideas were introduced and old ones altered. In particular, the Introduction, now of 66 pages, is a brilliant short analysis of the various schools of thought in legal philosophy both here and on the Continent. His criticism of the 'realists', who played an important role in the United States for a few years, helped to prevent that strange heresy from spreading to England. C. K. was not, however, a rigid traditionalist for he agreed that the doctrine of absolute precedents governing the House of Lords could not be justified either on the grounds of history or of reason. *Law in the Making* received the Swiney prize of the Royal Society of Arts in 1944.

His book *Law and Orders* (1945) was an important contribution to administrative law. Lord Hewart's *New Despotism* had been so violent in its attack on the so-called bureaucracy that it tended to defeat itself. On the other hand, C. K.'s moderate and reasoned criticisms proved to be of particular value.

C. K.'s third book of note was *The Queen's Peace* in 1953 based on his Hamlyn Lectures. This showed C. K. at his best as an historian, and has been accepted as authoritative on this important subject.

His other books were: *Bureaucracy Triumphant* (1931); *Legal Duties* (1931); *Democracy and the Individual* (1943); *Law and Disorders* (1954); *Legal Indiscretions* (1954); *Administrative Jurisdiction* (1956); and *Aspects of Justice* (1958).

In 1929 C. K. was elected Professor of Jurisprudence in succession to Dr. Walter Ashburner who, after a brief and unexpected tenure of the Chair, had returned to his home in Italy as he found that the Oxford climate did not suit him. It was fortunate for University College that the Professorial Fellowship was attached to it so that C. K. continued to play an important part in the life of the College. He was a regular attendant at all College meetings, and also was an active member of the College Law Society, being a favourite speaker at their annual dinners. On the other hand, he showed little interest in University business. He was a co-opted member of the Board of the Faculty of Law, but he took no part in other Boards or Syndicates. This may have been due to his conviction that administration was a necessary evil with which he would have as little to do as possible.

In 1931 Sir Francis Wylie retired as Warden of Rhodes House and, after some hesitation, C. K. accepted the invitation to succeed him. He had always been interested in Rhodes Scholars and had had many pupils among them; moreover the post enabled him to make extensive tours in the U.S.A., Canada, South Africa, and Rhodesia, which he greatly enjoyed. The newly built Rhodes House gave the Allens, who were the most hospitable of couples, an opportunity to entertain a never-ending stream of visitors. An account of his services to the Rhodes Trust is to be found in the volume *The First Fifty Years of the Rhodes Scholarships*, published by Blackwell in 1955. When the Rhodes centenary celebrations were held in Oxford in 1953 the former Rhodes Scholars presented him with a motor-car and also with a portrait of Lady Allen by Mr. Edward Halliday, which was much admired. The portrait of C. K. himself by Mr. James Gunn, which the Rhodes Trustees had commissioned for Rhodes House, proved less successful. C. K. explained this on the ground that during all the sittings the artist would speak about nothing but the iniquities of the income tax with the result that the aura of the portrait is one of deep depression.

During the last war he had various duties, besides those at Rhodes House: civil defence, membership of the Appellate Tribunal for Conscientious Objectors in London, and lecturing and speaking for the Ministry of Information in many different parts of the country.

He had been appointed a Justice of the Peace for Oxford City in 1941, becoming Chairman of the Bench from 1952 to 1957. The reputation of the Oxford Bench has never been higher than

during those years. His knowledge of the law, and, even more, his understanding of young people proved to be invaluable. His appearance added to his authority on the Bench. His deep-set flashing eyes, his strong nose, and his firm mouth all gave the impression of power. He had a pleasant sense of humour, but he never succumbed to it on the Bench. Nor did he laugh easily. C. K. held strong opinions on various subjects, but there was never the least suggestion that he was prejudiced or unfair. His views were regarded with the greatest respect not only by his fellow Oxford magistrates, but by the magistrates throughout England. This was of particular importance at a time when the position and the work of the magistrates was being reconsidered owing to the changed conditions that had to be encountered after the end of the war.

He became a Fellow of the British Academy in 1944. He was appointed a King's Counsel in 1945. He was elected an Honorary Bencher of Lincoln's Inn in 1954. He retired from Rhodes House in 1952 and was knighted in the same year. Though his Fellowship at University College ended when he became 65 he was elected for five successive years an Emeritus Fellow with seat and vote on the Governing Body, and this was extended for two years in 1957. He was elected an F.R.S.L. in 1951 and in the same year received an Honorary LL.D. at the Glasgow University Quincentenary.

He never had any hobbies in the 'collector' sense, but he derived much relaxation in his busy life from golf, of which he was an enthusiastic and not incompetent devotee, motoring, bridge, and the study and appreciation of wine. He was a keen follower of cricket—especially Anglo-Australian, since school-boyhood—and was proud to be a member of the Surrey C.C.C. He played the piano with energy, and had some gift for composition. The song 'Commemoration Day', written and composed while he was an undergraduate at Sydney, still appears in the Australian Students' Song Book. He was particularly pleased when his son became a professional musician.

But his greatest interest remained the law. When I visited him a few days before his death, he was sitting up in bed, preparing the next edition of *Law in the Making*. He was glad that the Lord Chancellor, Lord Gardiner, who had long been a friend of C. K.'s as he had been an active member of the O.U.D.S. and, like him, had almost been persuaded to adopt the stage as his career, had recently announced that their Lordships would no longer consider themselves to be absolutely bound by their pre-

cedent decisions. In the last of the many notes and articles that he had contributed to the *Law Quarterly Review* which was entitled 'Precedent Limp On' (1965), 81 *L.Q.R.* 36, C. K. had advocated such a step.

C. K. married Dorothy Frances, youngest daughter of Edward and Jane Halford of Oxford, in 1922. They had one son and one daughter. She has described their life together in her delightful book *Sunlight and Shadow* (1960), published after she died in 1959. Her services to the Rhodes Scholars made her beloved throughout the Empire, as C. K. persisted in calling it, and in every State of the U.S.A. On retirement from Rhodes House in 1952 she was made an Honorary M.A. of Oxford. She was also awarded the B.E.M. for services during the war. These services related in particular to the Oxford Leave Courses for British, Canadian, and American officers and men. More than 5,000 attended them during the last two years of the war, and everyone remembered the welcome he (and a few shes) had received at Rhodes House.

When Dorothy Allen knew that she was dying her constant worry was what would happen to C. K. after her death because he had had a heart attack and was a semi-invalid. As she had wished, he married her greatest friend Hilda Mary Grose in 1962.

It is interesting to speculate what C. K.'s career as a legal scholar would have been if he had not resigned his professorship in 1931 to become Warden of Rhodes House. I doubt whether it would have been very different. His work as Warden did not occupy a great amount of his time as he was a man who could make up his mind without undue delay. Nor, having done so, did he worry whether his decision was the correct one. He therefore had sufficient time in which to keep abreast of legal thought both in this country and abroad. The various editions of *Law in the Making* show how thoroughly he did so. His failure to discuss some of the theories which had achieved popularity elsewhere was due less to lack of time than to lack of enthusiasm for them. This was not caused by insularity as he had received a thorough training in Roman Law from de Zulueta and Sir Paul Vinogradoff. He disliked vague generalities which had no precise meaning.

C. K.'s strength lay in his being able to relate theory and practice. It was said about Maitland that when he wrote about medieval law he wrote as if he were living in the Middle Ages. C. K. had somewhat the same gift because when he was discussing the enforcement of the law he seemed to be considering

a concrete case that he had had before him. It was this that made his books so readable even though their subject-matter is far from being elementary. It is to be hoped that hereafter his text will be left unchanged, reserving amendments to the foot-notes. In the Preface to his seventh edition C. K. wrote 'ageing books, like ageing mortals, are susceptible only of a certain amount of rejuvenation'. It would not be surprising to find that this was meant as a hint to future editors.

A. L. GOODHART