

PLATE XVIII



CECIL HERBERT STUART FIFOOT

C. H. S. FIFOOT

1899-1975

CECIL HERBERT STUART FIFOOT, referred to in this memoir simply as Cecil, who spent his working life as an academic lawyer, had long before his death in January 1975 at the age of 76, established himself as a distinguished member of the Oxford Law Faculty. He was a scholar in the true sense of the word. No grave and plodding pedant remote from the joys of the world, but a sparkling, animated man, the possessor of both wit and a sense of humour. He could extract from the most prosaic facts a cause for laughter, a gift which often served to fix the attention of a pupil upon the matter under discussion. But what were more impressive were the rapidity with which his mind worked in reaching a conclusion and the quickness of his reaction to a given situation. When faced with a legal problem, it seldom took him long to unravel the relevant from the irrelevant and to identify the crucial matter upon which solution must depend. Byron's description of the mind as that 'fiery particle' was certainly justified in his case. In view of Doctor Johnson's remark that 'nothing is too little for so little a creature as man' it may be permissible to recall a trivial and farcical incident which illustrates the quickness of Cecil's reaction to an unexpected situation. While on his way one morning to the Codrington Library, he noticed a car drawn up by the pavement, in which a richly appressed lady of ample proportions was engaged in devouring a banana. As he drew level with the car the skin of the banana was flung on to the pavement and without a moment's hesitation he opened the door of the car, seized the offensive substance, now a little muddied, and slapped it down on the lady's knee saying with the utmost politeness '*Yours I believe, madam.*'

Cecil was born in 1899 at Penarth, a suburb of Cardiff where his father was manager of the Great Western Colliery Company. After leaving Berkhamsted School, he obtained a commission in the Royal Field Artillery in 1917 at the age of 18 and was posted to a mortar unit in France. In July 1918 he sustained a wound in the left ear which left him partially deaf for the rest of his life, and it was not until just before the armistice that he was released from hospital in England. He went up to Oxford in 1919 and entered Exeter College where he had

already been awarded a History Scholarship prior to joining the Army. He decided, however, to read law and thus became my pupil. As might be expected in the case of so talented a man, he was that rare phenomenon—the ideal pupil, and a tutorial with him was never the stagnant affair that it could so easily be. Industrious, possessed of a legal instinct and able to sift the chaff from the wheat, it surprised nobody when he obtained a First Class in the Final Honour School of Jurisprudence. He was called to the Bar by the Middle Temple in 1922 and began to practise in South Wales. Two years later, however, he abandoned practice and accepted a Tutorial Fellowship at Hertford College, Oxford.

While still in South Wales, he married Hjördis Baars, a younger daughter of Dr. Eriksen of Kongsberg, Norway. She brought him supreme happiness throughout his life. She was always at his beck and call ready and willing to do what she could, not only to relieve him of life's daily irritants, but also to untangle the perplexities that so often vex a professional man, especially in his role as an author which he was destined to become. The preface to his book on the life of Maitland contains this tribute to her: 'Finally, I wish to thank my wife. She has read every word of this book (as of all others that I have written) at each of its stages, from tentative approach to final publication; and at times of doubt, difficulty or despondency she has supported me with warm interest and cool judgment.'

As a Fellow of Hertford, he incurred two obligations; first to hold a weekly tutorial with each member of the college reading law, who would submit for criticism the essay that he had prepared during the preceding week. Secondly, to deliver during at least two terms in the year, a course of lectures open to all members of the University. Further, it would be expected, or at least hoped, that during the vacations, a not insignificant period of 28 weeks in the year, he would occupy himself with research and perhaps publication of the results. The fulfilment of each of these three functions presented no difficulty to him.

Though impatient by nature, he took infinite trouble to iron out the difficulties of a pupil, however muddle-headed and tiresome, to persuade him that law is not the uninteresting subject it appears to be at first sight and, above all, to convince him of the necessity to reason. That he always did his best to encourage the beginner is vouched for by a former pupil who has this to say: 'He was a gifted teacher. He made me feel that I knew something and certainly more than I thought I knew.'

I looked forward to, and now look back on, these and many other pleasant conversations.'

It was, however, as a stimulating and entertaining lecturer that Cecil chiefly excelled, an attainment which is only too rare in academic circles. So great did his renown become in this capacity that it was often difficult to provide an auditorium sufficiently large to house all those who wished to attend. When, for instance, it became impossible to cram any more people into the Old Hall of Lincoln's Inn, where his lectures at the Inns of Court were delivered, the common practice was to open the windows in the hope that at least something of what he said would be audible to those standing outside. The impact that he made upon his audience at Oxford is well described by Mr. Edward Burn, now a Student of Christ Church:

Like his hero, F. W. Maitland, of whom he wrote an urbane and perceptive life in 1971, Cecil Fifoot was not merely a writer; he was also an orator. He immediately established a rapport with his audience. A thin stooping figure, he looked as he lectured as if he were defying us not to listen to him. None could defy him. Authoritative and learned, he sparkled with humour. We listened and chuckled with him and so the more readily transcribed into our notebooks the apt phrases which illustrated his argument. There is no denying the truth of his remark in his book on Maitland that 'to make the dark ways light without oversimplification is a delicate mission', yet it is a mission that he himself frequently accomplished. His philosophy, as he once said to me, was that 'if a lecturer cannot give a short and simple explanation of a judicial decision, he is not worth his salt.'

His reputation as a lecturer won wide recognition, both at Oxford and in London. From 1930 to 1945 he was a University Lecturer in Law and in the latter year he was appointed All Souls Reader in English Law, a post which he held until his retirement fourteen years later. From 1954 to 1967 he was Reader in Common Law to the Inns of Court.

During the tenure of his Fellowship his duties as a tutor and lecturer did not prevent him from taking a prominent part in the welfare and administration of the College. He held the onerous position of Bursar for eight years and was Dean from 1940 to 1944. During his tenure of the bursarship it fell to him to superintend the erection of the Holywell Building which added so much to the amenities of the college. When, in 1935, the right to appoint one of the Proctors for the coming year passed to the college, the governing body elected him to the senior post. In 1962 he was elected to an honorary Fellowship of the college.

As an author he was no laggard. The following is a chronological list of the books that he produced.

English Law and its Background 1932; *Lord Mansfield* 1936;
History and Sources of the Common Law 1949;
Judge and Jurist in the Reign of Queen Victoria (Hamlyn Lectures
 1959);
Letters of F. W. Maitland (Selden Society) 1965;
Frederic William Maitland, A Life 1971;
Pollock and Maitland 1970 (The 31st David Murray Lecture at
 Glasgow University).

English Law and its Background is a mainly historical treatise designed to reveal the changing political and economic factors and the various internal influences that have affected the gradual development of English Law. His *Lord Mansfield* is not a biography of that great reformer, but a lively appraisal of the methods by which he contrived to circumvent the heterogeneous obstacles that for only too long had impeded the modernization of the Common Law, especially the Commercial Law.

But the work that established his reputation as a legal historian of growing importance was his *History and Sources of the Common Law*. His declared object in this was to set out the original sources of the Common Law as revealed by the early authors from Glanvill to Blackstone and by the Year Books and other ancient reports. Fearing, however, that to provide nothing more than this would be too strong meat for the student, he prefaced each subject with a narrative which provided a context for each of the sources. His hope, which many would regard as vain, was that a student engaged in tracing the development of a modern rule would be persuaded to start with an examination of its original source rather than to rely upon second-hand information.

His *Hamlyn Lectures* make absorbing reading. In the first of these he discusses the Victorian judges of outstanding stature and the slow emergence of a satisfactory system of legal education which brought with it the rise of the jurist. The general scheme of the remaining lectures is to stress the wide differences between the judicial and juristic approach to the Law, a disparity which he proceeds to illustrate under the separate heads of civil liability, corporate personality, possession, and criminal liability. These lectures were, in fact, merely remnants of a large amount of material which he had collected over the years in preparation for a complete book on the same subject, but most of which, unfortunately, he had destroyed on leaving Oxford.

What prompted him to publish his last three books was the admiration that he had long felt for the genius of Maitland, England's greatest legal historian. In the first of these publications he collected 500 letters written by the great man, including over 100 not previously published, which he had garnered from the archives of the Selden Society, the Public Record Office, and the Harvard Law School. These letters are of particular importance, since they illustrate the value of the contribution made by Maitland to the advancement of legal history. There is general agreement that their value was increased by the skill with which the editorial work was done.

To write the life of Maitland was a far more daunting venture. Maitland's literary output during his last twenty-one years at Cambridge was so varied in its range that only a scholar well versed both in Law and History would dare embark upon his biography. Moreover, his daily existence was uneventful in the sense that it did not depart from the quiet, placid existence of the normal don. It was not disturbed by any dramatic or spectacular occurrence so dear to the heart of a biographer. Yet his biography by Cecil surmounts these drawbacks. It gives a faithful account of Maitland's literary achievements, but what is more it paints such a vivid picture of the man himself that the mind turns at once to the evocative words of Browning:

Ah, did you once see Shelley plain,
And did he stop and speak to you
And did you speak to him again?

Incidentally, it also gives an interesting picture of the daily round of a Cambridge don in the closing years of the nineteenth century.

To have written the book was difficult enough, but to procure its publication proved even more difficult. The English publishers, including the Cambridge University Press, to whom it was offered, would have nothing to do with it. This lack of interest so dismayed Cecil that he decided to deposit the manuscript in the Edinburgh University Library, but at the last moment salvation came from across the Atlantic. The manuscript came into the hands of Professor J. P. Dawson, of the Harvard Law School and a Corresponding Fellow of this Academy, who was so impressed by its brilliance that he had little difficulty in securing its publication by the Press of his University. Nothing would have pleased Maitland more, for throughout his life he had the greatest admiration for the

Harvard Law School. In a letter in which he reluctantly declined to accept an invitation to lecture there, he said: 'You know how I regard the Harvard Law School: I feel as if I lived in the 12th century and was rejecting a "call" to Bologna.'

In his last published work, *The David Murray Lecture*, delivered to Glasgow University, Cecil contrasted the merits of two distinguished academic lawyers who, when discussed together, are usually referred to as Pollock and Maitland. The conclusion that he reached may be stated in his own words: 'Perhaps it would be just, if the two names are to be coupled, to speak not of Pollock and Maitland but of Maitland and Pollock.'

The last three publications are of immense value to all lovers of Maitland and few will disagree with Professor E. L. G. Stones when he says: 'The lecture, the life and the edition of the letters together entitle Mr. Fifoot to the honour of having done more than any other scholar to illuminate the life and achievement of Maitland.'

The eight books already discussed did not exhaust Cecil's literary output. In 1943, he agreed to collaborate with me in the preparation of a treatise on the Law of Contract and he assumed primary responsibility for about a third of the text. Any merit that the book may possess is largely due to his learning, the soundness of his critical faculty, and his general expertise as an author. He was constantly at work collecting material for the next edition and his assistance when sought was always given promptly and cheerfully, and generally it proved decisive. Having been the perfect pupil, he had now become the perfect colleague.

It is only proper that a memoir such as this, which has so far been cast in laudatory terms, should depict the whole man, warts and all. Like all mortals, Cecil had his failings, but they were few indeed. He did not, for instance, take kindly to criticism. Once he had reached a conclusion after much thought, to persuade him that he might possibly be mistaken was a task not lightly to be undertaken. The discussion might engender a certain heat and at times, perhaps, a trace of arrogance, but however stormy the argument might have been he never harboured the slightest resentment.

Though quick enough to reach a decision when faced with a legal problem, he was sometimes tormented by vacillation when required to make up his mind about some matter that would affect his future life, as for instance, whether he would stand for

a vacant post or collaborate with others in a joint venture. He would sometimes remain irresolute for days on end, reaching one opinion one day, only to reverse it the next.

A more serious trouble was that he had been born with a worrying disposition. This took two forms: he was inclined to let his thoughts dwell upon the possible occurrence of some disaster, often of the most unlikely nature, that would ruin his carefully laid plans; and if about to speak at a public function, he would be haunted by the fear that when it came to the crunch he might not be equal to the occasion. This turn of mind militates against success at the Bar and it was a relief to his friends when he abandoned his practice in South Wales and returned to Oxford.

It would be an exaggeration to describe him as an optimist. Like many others, he took a grim view of the world in general and particularly of England. Had he come across it, he would probably have welcomed the remark of Gissing, made over eighty years ago in *The Private Papers of Henry Ryecroft*, that: 'Every instinct of my being is anti-democratic and I dread to think of what our England may become when Demos rules irresistibly.'

Cecil retired from his Fellowship in 1959 and bought a house in Eastbourne, where he lived for the next ten years, but whether this was a wise move is a little doubtful. Eastbourne is a pleasant enough watering-place but its society contrasts somewhat violently with that to which he had been accustomed at Oxford. He, therefore, tended to become more and more withdrawn and aloof from the world. Nevertheless, he remained fully occupied. He continued to lecture at the Inns of Court, he took a leading part in the establishment of the tutorial system by the Council of Legal Education and became the first Master Tutor under the scheme. He played no golf or other games, but like Gibbon he had an 'invincible love of reading' and apart from long walks on Beachy Head and its slopes it was this which provided him with his sole form of relaxation.

His taste in literature changed over the years. In his youth, he preferred poetry, but as he grew older he turned more and more to prose, in which his interest ranged over such diverse subjects as music, the theatre, cricket, criminal detection, the humour of Wodehouse, biography, and history, especially military history. He read and reread all that had been written by R. L. Stevenson, Hardy, Trollope, Jane Austen, Mrs. Gaskell, especially in the last two cases, *Emma* and *Wives and Daughters*. He preferred the

earlier to the later stories of Henry James and he never tired of *The Riddle of the Sands*, the various Sherlock Holmes stories, and all that he could find relating to Samuel Johnson. In short, he vindicated Southey's statement that 'your true lover of literature is never fastidious'.

In 1969, he left Eastbourne and bought a house in Edinburgh within walking distance of his son's residence. But he was not fated to remain there long. In January 1975 he was suddenly struck down by an incurable complaint and died after a comparatively short illness.

And thus we say farewell to a man who throughout his life gave delight to many, hurt none, and increased the prestige of the Oxford Law Faculty.

GEOFFREY CHESHIRE

Postscript by Mr. Carl Albert

After Professor Cheshire had written the preceding memoir, there appeared in *The Times* of 27 March 1975 the following tribute by Mr. Carl Albert, Speaker of the U.S. House of Representatives. Professor Cheshire feels that this tribute makes an appropriate postscript to the memoir of Mr. Cecil Fifoot. It is reproduced here by permission of Mr. Carl Albert and of Times Newspapers Limited.

The obituary of Cecil Fifoot, late a Fellow of Hertford College, Oxford, has just come to my attention. This was very sad news to me.

From October, 1931, to June, 1934, I read jurisprudence at Oxford. During all this time Mr. Fifoot was my tutor. He was also my friend. I spent a lot of time with him not only in his tutorials but also in his home and elsewhere. His family and I became very close. His impact on my life and career was greater than that of any other teacher I have ever had.

It was a privilege to know and to attend lectures of all law dons at Oxford, including such eminent men as Holdsworth, Cheshire, Stallybrass, Lawson and others, but there was only one Fifoot. His animation, his good humor, his sharp mind, his amazing intellect, and his innate gentility and decency made him an extraordinary man. He conducted his tutorials and lectures with an enthusiasm that was invariably transmitted to his pupils. He had a way of laying down dull legal principles and complex judicial decisions with clarity mingled with the kind of wit that drove his points home even to the weakest of his students. He used to say to his classes, 'I am trying not only to put the law in a nutshell but to keep it there'. He had that rare talent that

enabled him to stimulate the very best in his most intelligent pupils and also to impart to the dullest of those thrust upon him a knowledge of the law which would enable them to write much better than minimum papers on their examinations.

Cecil Fifoot was a small, thin man, somewhat pale but there was always a twinkle in his eye. Although he had horrible scars on his neck from a wound he received in the First World War, he never complained. The wound affected his speech very slightly, only enough to add to the color of his presentations.

I might add that he told me he received his field treatment for his wound in a 'mass production' line at the hands of a female American surgeon. There were ten ahead of him as he was hauled up to the queue. That was the first time I had ever heard of a woman surgeon from this country.

The thoughts I have tried to express here are, I am sure, shared by every Oxonian who ever sat at Fifoot's feet. We are all better men because, as we rounded out our formative years, he lived and taught us.