



G. C. CHESHIRE

GEOFFREY CHEVALIER CHESHIRE

1886–1978

GEOFFREY CHEVALIER CHESHIRE was born on 27 June 1886, the second son of Walter Christopher Cheshire, Solicitor and Registrar of Northwich County Court, Cheshire. One of his brothers, Prebendary Christopher Cheshire, was at one time Chaplain to the Speaker of the House of Commons. They were descended from a line of small landowners in the Hartford district who had recently taken to the law in defence of their interests. Geoffrey's father, whose easy-going neglect of the family business had allowed a partner to swindle him, left his wife, a Miss Hatt-Cook, to bring up the family almost single-handed; and it was from his mother that Geoffrey received his energy and drive.

He was educated at Denstone College, presumably on the classical side, for he needed Greek to matriculate at Oxford. There is, indeed, ample evidence of a classical education in his writings. However, on entering Merton College as a commoner in 1905 he chose to read law under J. C. (later Sir John) Miles. He already showed the intense activity for which he was always noted, for representing the College in Association Football and in Lawn Tennis did not prevent his obtaining a first class in the Final Honour School of Jurisprudence in 1908. At the time he was thought to have forced his way by industry into the first class—a judgement which, with his innate and continuing modesty, he would probably have agreed. He did indeed achieve only a second class in the examination for the BCL degree, though that was a time when first classes were very rarely given.

In the meantime he had spent the years from 1909 to 1911 as a Lecturer at the University College of Wales, Aberystwyth, one of a large number of able lawyers who were chosen and fostered by that eminent discerner of youthful talent, Professor T. A. Levi. It was there, probably, that he acquired valuable lecturing experience. In 1911 he returned to Merton as assistant lecturer in law to help his old tutor during his proctorship; and he also did some teaching for New College. In 1912 he was elected to a Fellowship at Exeter College. He had been called to the Bar by Lincoln's Inn and had been awarded an Inns of Court Studentship in 1911.

Pausing there, one may note that he was the first law teacher at Oxford to have been entirely a product of the Oxford Law School; his legal education was entirely academic; he had not taken the Final School as a supplement to a Final School in another subject; he had never practised or even spent a period as a pupil in chambers. And yet he was never regarded by practitioners as a mere academic lawyer. How much he owed to his father's practical experience and to grappling with problems he afterwards encountered as bursar of Exeter it would probably be no longer possible to assess; but he felt near enough to the land to have considered at one time buying a farm.

He was supremely fortunate in being established in his chosen career before the advent of the Great War. His character and habits were set in an age and society that abhorred slackness and on the whole knew where it was going. He rarely encountered the major frustrations that have become increasingly endemic in the present world. He acquired a momentum that he never lost.

Shortly before the war, in 1914, Cheshire had met his future wife, Primrose Barstow, the younger daughter of Colonel T. A. A. Barstow, Seaforth Highlanders, and, during a period of leave in 1915 they married. She had spent most of her life abroad, largely in Switzerland, which continued to attract her, for they both spent much of their holidays driving in Europe and walking in the mountains.

Cheshire had obtained at once a commission in the Cheshire Regiment, but his interest in motor engineering led him to seize an early opportunity to transfer to the RFC. Disappointed of his desire to fly aircraft, on the doubtful ground of imperfect eyesight, he was assigned to the Kite Balloon Section, which involved him, for a few months, in sitting in a basket a thousand feet above the British lines and spotting German targets for the gunners. As his son Christopher, who was himself shot down and taken prisoner in August 1940, says,

He used to recount some of the anxious moments he experienced when airborne and spotting the German lines. He was not so much concerned by the threat of enemy artillery as he was by the possibility of being shot down by an enemy fighter. On more than one occasion he watched fighter dogfights and wondered what would happen if the German won. He was twice wounded, but never shot down by enemy aircraft.

Oddly enough, he was nearest to death in a training balloon flight in England, which ended in a forced landing on the sands

of Dee. He described it in a vivid account, a reading of which shows that he already had stylistic gifts and makes one sorry that he never afterwards indulged an obvious taste for narrative.

After the war he returned to Oxford and picked up the threads he had dropped; and from 1919 to 1933 he also acted as bursar, looking after the estates as well as the internal economy of the College. As law tutor he regularly had about thirty pupils, to whom he devoted close attention. As a lecturer he always drew large audiences, speaking in a clear gentle voice and with lucidity and directness. He also found time to publish in 1919 a paper on *Investigation of Charges in the R.A.F.* and in 1925 his *Modern Real Property*; and he acted as General Editor of the nineteenth edition of *Stephen's Commentaries on the Laws of England*.

In 1922 he added to his other offices that of All Souls Lecturer in Private International Law, and in 1935, two years after relinquishing that appointment for that of All Souls Reader in English Law, he brought out the results of his work under the title *Private International Law*. He next turned to contract law and after lecturing for some years produced in 1945, in collaboration with his former pupil, C. H. S. Fifoot, *The Law of Contract*, accompanied in the following year by a selection of illustrative decisions in *Cases on the Law of Contract*.

In 1944 he had been elected Vinerian Professor of English Law in succession to the late Sir William Holdsworth; he retired prematurely from the Chair in 1949. From 1945 to 1957 he was employed by the Council of Legal Education as Reader in Real Property and Conveyancing, and also, from 1945 to 1960, in Conflict of Laws. He delivered in 1948 a lecture on *International Contracts*, which was published as the fifteenth lecture on the David Murray Foundation in the University of Glasgow. After his retirement he continued writing, and a fruit of this later period was *The Private International Law of Husband and Wife* (1963).

Although as a college tutor he had shunned meetings as a waste of time, he later served on many official bodies. He was a member of the Lord Chancellor's Committee on Foreign Marriages in 1939; a delegate to the Hague Conference on the Codification of Private International Law from 1951; a member of the Lord Chancellor's Committee on Private International Law from 1952 to 1957; and of the Institute of International Law. He was a Justice of the Peace for Berkshire, and regularly presided over the Juvenile Court for the Abingdon Division,

in which he resided for many years. In 1940 he became local commander of the Home Guard and insisted on doing patrol duty in person and often at night.

He was elected in 1945 a Fellow of the British Academy, and an Honorary Bencher of Lincoln's Inn. He became an Honorary Fellow of both Merton and Exeter Colleges; and he was awarded the honorary degree of LL.D. by London, Manchester, and Jadavpur Universities. He was offered silk but refused it.

He died, after a motor accident, on 27 October 1978.

This brief account needs supplementing to give colour to Cheshire's achievements as a teacher and author, to his private life, and to the esteem in which he was held by his brother lawyers.

Good accounts of teaching are—outside fiction—hard to find; and this is especially true of the personal relation between tutor and pupil within the Oxford tutorial system. Of Cheshire's methods I have been fortunate enough to obtain much interlocking material.

He attracted to Exeter a number of the ablest law students, especially from North America. Three of them, one Canadian and two Americans, met in Toronto in 1974 to celebrate the jubilee of their entry to Exeter to read law with him. Having failed to reach him on the telephone they wrote a joint letter in which they said

We simply wanted to express to you orally the deep and sincere gratitude which each of us feels towards you for the wonderful training and instruction you gave us. There surely was never so great a law tutor. You were no 'primus inter pares' but by a tremendous margin 'primus'.

They received a characteristic reply, in which he said

No doubt the kindly things that you say exaggerate the value of any help that I may have given you fifty years ago, but nevertheless it is a great comfort to know that you still look with favour upon such efforts as I may have made.

I still retain a vivid memory of each one of you.

One of them, Sheldon Tefft, a Rhodes Scholar from Nebraska, who later pursued a distinguished academic career, says

I went to Exeter because he was its Law Don. Though he was not the most brilliant lawyer there, he was by far the most effective teacher. He was especially kind and helpful to those of us from overseas. I was too old and set in my ways to be a good pupil, but even so, he was

most tolerant and helped me in innumerable ways prepare for the finals not only in schools, but also for the Vinerian exam. and also for the B.C.L.

Henry Borden, who has been active as an eminent Toronto lawyer and in the highest ranges of Canadian business, says,

After a few tutorials with Tefft and me, Cheshire changed his approach, which for us was wonderful. The Real Property Act, which completely revised and revolutionized English real property law had recently been passed by the British Parliament and Cheshire was engaged in writing a monumental book, the first on 'Modern Real Property Law'. Instead of having us write essays on some aspect of, say, the law of Contracts or Torts, he would get us to sketch out parts for his book and then in our tutorials would go over his manuscript or draft with us, make us comment, criticize and so forth. I suppose he did this on the theory that if, with our background work we could not follow or understand his writing, then he would have to change or rephrase it if we could convince him that we thought something was not clear. Anyway, it was a challenge to us and a great stimulus to thinking and studying. I hope that it contributed something.

Tefft says, however, 'I fear that our contribution to his great book on Real Property was minimal.'

The third, Alfred L. Wolf, who became an eminent practitioner in Air Law and attained the rank of Brigadier-General in the US Air Force, says,

Cheshire had favorites among those he tutored. This was evidenced, *inter alia*, by invitations to his home, to teas and other functions. And for the best law students, by intensive coaching for University examinations. . . . Those papers I presented to Cheshire, which he returned, and I still have, indicate in his writing a mild bewilderment, possibly some satisfaction that such an empty vessel did contain a drop of knowledge. And that he sought to stimulate a thirst for more by noting such things as 'this thought could bear development' etc.

Another American Rhodes Scholar, from Kentucky, W. Hugh Peal, says

We saw him in tutorials one day a week and he had an easy way of joining us in walks and conversing in chance meetings. . . . He knew, as few lawyers do, that the law is a dependent discipline in human society, and that it must change both rules and emphasis as society changes. For instance those were the days when Birkenhead and Buckmaster were trying to modernise the English divorce law. Cheshire would illuminate his discussion of the problem by poker-faced statements that Mr. Peal had told him that one could get a divorce in Florida on the grounds that the erring party had a bad temper.

R F

Cheshire really understood and taught the case method. He would take a leading case, sometimes one on the way to the House of Lords, and use it as the culminating point of its chief problem and as the jumping off point of future developments.

Cheshire was an exacting tutor, but never a severe or grumbling one.

To quote Henry Borden again, on a more personal side, Cheshire was a charming individual, highly respected by all his students. He did not treat his tutoring as a chore but took a keen interest in their welfare. At least that was my experience and I well remember how I consulted him—as a father-confessor—when trying to study for my B.C.L. I had overworked and Cheshire realized that. There was no indecision on his part. He simply, in effect, ordered me to leave Oxford for two or three weeks and go to the south of France taking no law books or notes with me.

Ferdinand F. (Ferd) Stone, a Rhodes Scholar from Ohio, who has recently retired from his chair at Tulane University, New Orleans, and from the directorate of the Institute of Comparative Law which he founded there, reports

At the end of my first term at Oxford I was convinced that I would never become a lawyer and I told Dr Cheshire so. Dr Cheshire said 'I'm finishing building a tennis court at Grey Walls and I need some help—come along this week-end' and I did, and he said 'Stone, the difficulty is that you do not seem to realize that these cases were brought by real people angry enough to spend money to see their rights vindicated. It's not just Smith and Brown.'

He was a great man, a warm friend and I miss him very much indeed.

After all, however, Cheshire's fame will rest on what a younger reviewer called 'his famous trinity', which introduced a new stage in the development of three important branches of English law. Although he published a few articles, usually in co-operation with other law teachers, he put all his strength into the writing and continual revision of those three books. They must be described in turn.

Each of them was written to meet the same need, to fill a gap caused by the obsolescence of the existing books on an important subject; and in each case he seized the opportunity with decision and speed. But the need for a new book on Real Property was accentuated by important changes made by statute.

The complicated legislative process which began with the enactment of Lord Birkenhead's Act in 1922 was not complete until the Act was for the most part replaced, along with most of the older legislation, by the seven Acts which constituted the

Property Legislation of 1925 and came into force on 1 January 1926. But as early as 1922 it was obvious that lectures on the old law would have to be brought radically up to date; and Cheshire tells us in his original preface that the decision to write his masterpiece, *The Modern Law of Real Property*, was come to soon after January 1924. Although the task was a daunting one, he was able to publish his book as early as September 1925, in time to prepare readers for the coming into force of the new legislation. He was not a perfectionist and anticipated criticisms, which he met in subsequent editions.

The property legislation of 1922-6 was in substance a technical clean-up of property law by expert conveyancers, along lines laid down by the most far-seeing of their predecessors. Along with improving the management of landed estates, it was above all intended to simplify and cheapen transfers of land. In no sense did it effect a revolutionary change in the policy of the law. Hence the task that faced Cheshire was to trace the historical development of both policy and technique and to enunciate the law in its new more perspicuous and rational form; and his heart was in it.

When it was first written his book set out what could be seen as the classical law of real property simplified and purged of its worst defects. It was not unreasonable for him to neglect the awkward intervention of rent control, which might then be regarded as a temporary solecism. For the first six editions the book underwent little beyond what have been called 'normal repairs made necessary by new legislation'. In the seventh and eighth editions major structural improvements were made to conform to changing ways of looking at the subject, and rather more extensive doctrinal changes to meet criticisms from that very learned lawyer A. D. Hargreaves.

By now, however, Cheshire was forced to come to terms with radical changes in legislative policy, necessitated by fundamental economic and social changes; and it went against the grain, as he showed clearly in his several prefaces. Most of the new legislation, for instance on rent restriction, planning and leasehold enfranchisement, together with an ampler treatment of registration, he left to be described by younger colleagues. With the tenth edition, of 1967, he bowed himself out. Let Edward Burn tell the manner of it:

I was bidden to lunch at Butterworths, seemingly to offer advice on a new edition of *Modern Real Property*. I met him in the lift at the precise time of invitation—he was a stickler for punctuality. The book

was never mentioned until we were about to leave, when he said casually 'I hope that you will take it on. Will $\mathcal{L}x$ do?'

The book was an immediate success. Harry Hollond, his Cambridge contemporary in the field, introduced his review of the first edition¹ with the words

Let it be said at the outset that all students of Real Property Law owe a great debt of gratitude to Mr. Cheshire for this book. Without it we and our students should have been in a sorry plight during the past year. And it has deservedly received from eminent masters in the law recognition of which any legal writer might be proud.

It was welcomed by Holdsworth² for its skilful tracing of continuity between the old law and the new, and by the Harvard Professor Joseph Warren. In reviewing the third edition Harry Hollond said:³ 'This book as it were was born a classic.' Indeed, originally designed for students, it rapidly became used, on matters of principle, by both Bench and Bar, and acquired the status of a book of authority. There were always criticisms, as, for instance a complaint that it had tamed the law of real property for the class-room, but those who found most to criticize were loudest in their praise.

The book owed much of its success to Cheshire's ability in exposition and clarity of style. To quote Derek Hall,⁴ recalling his own experience,

The peculiar excellence of Dr. Cheshire's book lies in its intelligibility not only to the swift but to the halt and lame.

In 1927 Cheshire undertook a task which, entered upon under the most promising auspices, ended in disappointment.

Blackstone's Commentaries on the Laws of England, which had gone through fifteen editions, had in 1941 to 1945 been replaced by Stephen's Commentaries, which, although they reproduced Blackstone's original language where it enunciated the existing law, were, especially in arrangement, an original work. It had in its turn gone through eighteen editions and got rather out of shape. But it was still prescribed by the Law Society for the intermediate examination to be taken by articled clerks who wished to become solicitors but had not taken a university degree in law. It was also used to some extent by solicitors, but not in university law teaching. When the new property legislation came into force the occasion seemed to

¹ 2 Cambridge LJ 411. ² 42 LQR 159.

³ 50 LQR 113. ⁴ 13 MLR 402.

present itself for a complete reorganization and perhaps for a break-in upon the universities.

Cheshire undertook the task, with the help of his old tutor, Sir John Miles, as consulting editor, and in 1928, along with C. K. Allen, C. H. S. Fifoot, and F. H. Lawson, produced a nineteenth edition. His own personal contribution was the second volume, comprising the law of property, and the most forward-looking parts of the law of torts contained in the third volume, in all, that is to say, about one-third of the whole work. In his preface he said of the second volume, which was virtually rewritten by him,

In view of the assimilation of real and personal property effected by the statutes of 1925, the law of property has been treated as forming a composite whole, and an endeavour has been made to show that there is no longer the same necessity as formerly to study the law of reality and of personalty separately.

Although the new edition was prescribed by the Law Society for six years, in the end, owing to a combination of factors which would now be difficult to unravel, it failed to maintain itself. Its failure induced the publishers to return in a new edition to a more traditional design, which did not in the end ensure 'Stephen' against its ultimate, most regrettable, disappearance. In the process Cheshire's brilliant, though unacceptable, restatement of property law as a single whole also disappeared from circulation. It can now be consulted only in libraries or in second-hand copies. Unfortunately it had not broken through into university teaching, though it had received a welcome from academic reviewers.

The second of Cheshire's books—and in the opinion of many his best—was on Private International Law, also known as the Conflict of Laws. If a dispute contains a foreign element, Private International Law intervenes to select the jurisdiction which is competent to decide it and the system of law by which it is to be governed. In spite of its name it is an integral part of English law.

In the preface to his first edition Cheshire said

Of all the departments of English law, Private International Law offers the freest scope to the mere jurist. It is the perfect antithesis to such a topic as real property law. It is not overloaded with detailed rules; it has been only lightly touched by the paralysing hand of the Parliamentary draftsman; it is perhaps the one considerable department in which the formation of a coherent body of law is in course of

process; it is, at the moment, fluid not static, elusive not obvious; it repels any tendency to dogmatism; and, above all, the possible permutations of the questions that it raises are so numerous that the diligent investigator can seldom rest content with the solution he proposes . . .

When Cheshire published his book the existing ones had, through successive editions, lost their freshness, so that the field was open for something that, besides providing students with a shorter account, would subject the existing authorities, judicial and juristic, to systematic criticism. For, to quote him again, after saying that the task of evolving a homogeneous and scientifically constructed body of law must necessarily be performed by the judges, there seemed 'no reason why the jurist should stand aside in cloistered inactivity'.

The book at once found golden opinions, not only here at home, but at Harvard from the great American authority, Joseph Beale, who wrote in a review,¹

His careful and thorough examination of the questions he deals with, his lawyer-like interpretations, his fearless re-examination of every question, the clear way in which he expresses his views cannot be too highly recommended . . . Dr. Cheshire's book is destined, in the reviewer's opinion, to be for his generation the standard on the law with which he deals.

and later, in conversation with me, he spoke of it as the work of a master. In reviewing the second edition his colleague Erwin Griswold said²

The work is already a standard one. Only the hope that the author will yet give us many more editions keeps it from being called a classic. . . . The general freedom from 'reverence' for what the courts have done continues and is refreshing in an English book.

J. E. S. Fawcett, in a review of the third edition³ remarked on the lucid thought and lapidary style which made the earlier editions models of English legal writing.

Ronald Graveson, in his review of the third edition,⁴ uttered a mild complaint:

Professor Cheshire's book still retains its characteristic admixture of law as it is and law as it would be if it was better than it is. This admirably critical and commendable constructive method of writing, so valuable for those already familiar with the subject, is a little confusing to students.

¹ 51 LQR 537, 539.

² 51 Harvard LR 1127.

³ 1 ILQ 391.

⁴ 1 Journal of the Society of Public Teachers of Law (NS) [JSPTL] 226.

But he added

The publication of a new edition of Cheshire's *Private International Law* means far more than a final bringing up to date of an earlier edition. For in Professor Cheshire we have an author who, despite his eminence and high authority, still possesses the rare virtue of being able to change his mind when convinced of the arguments of others.

And on another occasion he said¹

Yet the uniqueness of Cheshire's writing is its quality of constant freshness and intellectual resilience, so that the seventh edition, though more sophisticated and mature, is as fresh and stimulating as the first.

The late Sir Otto Kahn-Freund, learned in both Continental and English Law, said in his review of the fifth edition,²

It is easy to see why the book was a success from the start. The author combined a gift for detailed analysis with an unusual capacity for systematic synthesis, a respect for traditional ideas with willingness to experiment with new ones, and accuracy with skill of presentation. An intelligent reader of a law book, be he a young student or an experienced practitioner or scholar, prefers an intelligible, that is, a logical and systematic presentation of a subject, to a pile of *dissecta membra* of 'cases.' He also prefers an author who fearlessly communicates his own ideas to a writer who stands in front of any judicial decision or 'dictum' 'mute by the visitation of God'. And he prefers an open-minded author to an obstinate one. Systematic presentation, courageous suggestion of new ideas, and—as subsequent editions showed—receptivity and open-mindedness have been the principal characteristics of Dr. Cheshire's work. . . . Dr. Cheshire's book put this subject 'on the map' academically in England, and it gave to English learning and ideas in this field an international prestige which they had never had in the past.

The same views, amplified by further detail, were expressed by John Morris, who rejuvenated the run-down editions of Dicey's *Conflict of Laws*:³

It took *Westlake* sixty-seven years to advance from its first to its seventh edition, and *Dicey* sixty-two years. *Cheshire* has reached the same milestone after only thirty years. And *Cheshire* is—what *Westlake* and *Dicey* never were—a book which can be read with equal profit by English students, practitioners and judges and by foreign lawyers. Moreover, Dr. Cheshire's achievement cannot be properly assessed without considering the magnitude of the task which faced him when he first began to write his book in 1932. No students' textbook on the conflict of laws then existed. There were only the unintelligible *Westlake*, the wayward

¹ 41 *British Yearbook of International Law* 465.

² 6 *ICLQ* 699.

³ 15 *ICLQ* 602.

genius of *Foote* and the encyclopaedic but disorderly *Dicey*. Hardly any articles on the conflict of laws were published; and there were no case notes evaluating recent decisions, which are now such a welcome feature of the *Modern Law Review*, the *Cambridge Law Journal* and, of course, this *Quarterly*. It is Dr. Cheshire's great achievement that he produced order out of chaos, compelled his rivals to copy his arrangement and borrow many of his ideas, and stimulated interest in the subject in this country. To future legal historians, 1935 will seem as important a landmark in the history of the conflict of laws as 1834, 1858 and 1896—the dates of the first editions of *Story*, *Westlake* and *Dicey*.

For the book's readability I may perhaps adduce my own testimony. It was not my subject; and it was a dozen years since, in preparing for an examination, I had read *Dicey's Conflict of Laws*. So when a copy of Cheshire's book was sent to me by the publishers, I looked into it casually. I found myself drawn into reading it straight through to the end.

For the last word I quote Peter North,¹ who collaborated with Cheshire in the eighth edition and took over from him the ninth:

The book was, and always has been, more than a student's textbook. It has been cited and relied upon regularly in the courts. It has never professed to be the majestic all-embracing practitioner's work that *Dicey* and *Morris* has become, but nevertheless, it has provided sufficient breadth of coverage, and depth of analysis, to be an oft cited rival. Private international law is an unusual subject in English law in that cases are more often decided on theory or doctrine than elsewhere in the law and this has placed greater responsibility on the textbooks. It is not unknown for a case to be decided by a judicial choice between Cheshire and *Dicey* and *Morris*.

and, for his account of the take-over,

I first met him in 1968 when, quite out of the blue, he wrote to invite me to discuss with him taking on the editorship of the 8th edition of *Private International Law*. I viewed the meeting with some slight trepidation as he was a 'great man' and an unknown quantity to me; it was to me a major step in my academic career to be invited to take over the main textbook in one of my chosen fields and I thought it might be difficult to edit the book of a living author. How wrong I was to have any such fears. Geoffrey made a deep impression on me at the first meeting—an impression such that we were quickly firm friends and he used to ring me up to ask for advice on matters quite unconnected with private international law.

What impressed me as much as anything was his saying to me: 'Here is the book—you take it over. Now, if I have time and inclination, are there any chapters or bits that I could do?' He was handing

¹ In a letter to me.

the book over to me. We agreed that he should do about three chapters and (for that edition only) that we should each read what the other had done. Rather hesitantly, I asked what would happen if our opinions clashed. His answer was that, if after discussing the matter we were still in conflict, then my view as editor was to prevail. I was much impressed by that gesture. In the event we only disagreed on one matter and I compromised with a footnote expressing what was in fact Geoffrey's view, as a contrast to my view in the text.

Cheshire next turned to the law of contract, a book on which was badly needed; for all the existing books had originally appeared a long time previously and later editions still betrayed older habits of thought. He enlisted the help of his former pupil Fifoot. Although both authors were in constant communication with each other and took responsibility for the whole, it is known that Cheshire wrote Part IV (Contracts that contain a Vitiating Element), Part V (Capacity of Parties), Part VII (Discharge of Contract), Part VIII (Remedies for breach of Contract), and Part IX (Quasi-Contract).

Cheshire and Fifoot on Contract was projected before the outbreak of war and some progress had been made with the writing. It was set aside in the early stages of the war, but was later resumed and had then to be largely rewritten. In their preface to the first edition the authors said

Unexpected delays have aggravated the difficulty, always anxious, of absorbing current developments in Parliament and in the courts, in the business world and in professional literature, and have accentuated the feeling, ever present to authors of text-books, that they may pursue, but can never overtake, the fleeting vision of the law. We may only hope that we have set an established subject in new perspective, neither disdaining older authorities where they are valuable nor citing new cases merely because they are novelties.

The book underwent the usual development of a book originally intended to provide a selective statement of general principle, primarily for students. Although Cheshire wished to prevent it from becoming too long—'the fatal trap is to waste space on recent decisions just because they are recent'—it inevitably grew, so that the last edition is two hundred pages longer than the first. On the whole the increase was not due to the mere multiplication of judicial decisions, which for the most part merely swelled the footnotes, but rather to the need to subject interesting and even controversial decisions to the generous discussion which had from the start been one of the most valuable features of the book. Thus the attractive freshness

which Hughes Parry had remarked on in his review of the second edition¹ has always been maintained. Nevertheless, it has perhaps lost some of its transparency and, one might even say, its lack of sophistication. But then the law of contract itself has become more sophisticated. *Cheshire and Fifoot* has never played down to the raw student and, as another reviewer said,² it 'is entirely unsuitable for any form of cramming'. It has indeed become rather formidable.

The critical temper that pervades the book has brought denunciation upon the heads of its authors from those who require textbooks to 'set out the existing law with all its faults and imperfections'. Indeed, students have commonly—and rightly—been warned not to take for granted everything contained in it. But what may be a source of danger for the student has made it peculiarly valuable to the Bench and Bar. Now that it is no longer a rule that the works of a textbook writer may not be cited in argument until he is dead, 'both counsel and judges', as Lord Denning has said,³ 'habitually refer to the latest edition of the latest work on a subject for all the assistance they can get'. I well remember, on a cursory visit to the Law Courts, hearing counsel read to three judges in the Court of Appeal the whole of seven pages in which Cheshire had criticized a greatly disliked earlier decision. The case before them they were able to decide on other grounds,⁴ but when the same point came to be considered later in the House of Lords the obnoxious decision was overruled. There can be little doubt that Cheshire's attack on it was influential.

There is a general consensus that *Cheshire and Fifoot* was an advance on any previous book on contract; and Cheshire himself came to enjoy a greater authority than many judges, and was consulted privately from time to time by some of them.

The take-over by Michael Furmston, which took effect in the ninth edition, of 1976, had been preceded by ten years in which he had increasingly lightened the task of the authors.

In his review of the first edition of *Modern Real Property*⁵ Joseph Warren noted that it was intermediate between a treatise and a manual. That judgement might be applied to all Cheshire's books. They are not exhaustive: they do not deal with every judicial decision or legislative provision relevant to

¹ 1 JSPTL (NS) 301.

² J.H.A. Lang in 1 JSPTL (NS) 64.

³ 1 JSPTL (NS) 262.

⁴ *Muskham Finance Co. v. Howard* [1963] 1 QB 904.

⁵ 39 Harvard LR 524, 525.

the subject. On the other hand, they contain much more than would be enacted in a code, or than actually appeared in our nearest equivalent to a civil code, *Jenks's Digest of English Civil Law*. They do not merely state rules and general principles but allow scope for historical explanation, criticism, and, above all, the discovery and development of logical strands of doctrine. These qualities lead both Bench and Bar to look to his books for help in basing argument on principle.

Cheshire was, indeed, not content to accept English law as an 'ungodly jumble', but strove to find rational explanations for apparently irrational rules, and even to rationalize the law. Thus he could explain even where he could not justify. He played a decisive part, by conduct and example, in bringing the juristic treatment of English law up to continental standards.

One of the secrets of his success as a writer was that he did not find law easy. He was thus able to enter into the difficulties of his pupils and audiences.

He could learn from others less gifted than himself. I well remember his accosting me in the Turl with the question 'What is the difference between *St. Helen's Smelting Co. v. Tipping* and *Rylands v. Fletcher*?'; and, on my replying that I did not know, he said 'A third-class man has just asked me'. The question was worth putting and indeed even now could lead one on to difficult problems of classification in the law of torts. For in both cases a defendant was held liable for damage caused to a neighbour by an escape, without any fault on his part, in the one case of noxious fumes, in the other of water, and yet the two cases appeared in different chapters in the textbooks.

All Cheshire's books, indeed, started as books for students, pitched quite high, for the better class who were not content to memorize but expected convincing explanations and, where appropriate, criticism. Thus, behind the books stood lectures, by a teacher accustomed to discuss the law in tutorials with pupils who had been encouraged to read and study the cases. Moreover, since a lecturer cannot banish his cases to footnotes, but must incorporate them in the flow of oral exposition, what more natural than to follow the same practice when the lectures were turned into a book? That, at any rate, is what Cheshire did; and a perceptive reviewer of *Cheshire and Fifoot on Contract*¹ noted that 'This method has the advantage of giving the reader a good grasp of the leading cases, and also

¹ J.H.A. Lang in 1 JSPTL (NS) 64.

of making the book more human and readable'. And he went on to say

I should finally like to say about this book, that although I should hesitate to give it without warning, to any but more advanced students, it has given me more pleasure and interest in reading it than any other book on a legal subject that I have read in many years, and I wish it a long and useful life among the classics of legal literature.

Never idle, Cheshire kept his work apart from his play. It was probably as an undergraduate that he formed the habit—then and much later customary at Oxford—of not doing intellectual work between lunch and tea. He claimed—so his son Christopher informs me—that physical work tuned up his mind for his academic work, which he invariably did between 5 and 7 o'clock. He also found time for general reading. His son Leonard writes:

Reading was his great love, and this probably as much as anything helped to keep his mind as sharp as it was right up to the end. Trollope was, I think, his favourite author. He loved anything to do with pre first world war Europe, cricket and trains. He would happily go to Crewe and spend a day there just watching trains passing through. In addition to the classics, father would read detective novels and I think had a preference for Simenon.

From the time when he represented Merton in the Soccer Eleven and the Tennis Six, he had always played games actively. On the whole he preferred tennis, at which in his day he was an above-average player, though he also played golf. About 1927 he rented as a holiday home Tess Cottage in Dorset, where he both organized and played in tournaments. Then, in 1931, he built, with the assistance of his architect friend Harold Hughes and the clerk of works at Exeter College, but without a contractor, his house 'Grey Walls', at Cothill, Berkshire. There he made his own hard and soft courts and laid and kept in order his garden, drafting to help him his two sons and any visitors or luncheon guests, including pupils. One reason for choosing his building site was that it was within walking distance of Frilford Heath Golf Course, where he played regularly, often with his old Merton tutor, Sir John Miles. He ski'd and skated and enjoyed long walks, especially in the Alps; and he watched cricket and rucker with pleasure. He travelled widely all over Europe and visited Singapore and, for a substantial period, India. Until the end he kept himself fit.

From his undergraduate interest in motor cars and stripping and reassembling the engines of his cars he acquired an instinctive sense of what was wrong with an engine. He drove a car of an advanced age appropriate to his own and told his old pupil Ferd Stone, on meeting him at the station for his last visit, that there were bets in the village as to who would go first—he or the car. Unfortunately they went together.

Although he did not go much into society, he was, in the words of Hjördis Fifoot, the widow of his old pupil and collaborator,

the pleasantest possible host in his own house and always made one perfectly at home because he was himself so perfectly natural and sincere; he was the most loyal of friends.

But he found happiness in a closely-knit family life. His first wife's cosmopolitan upbringing had given her a wide facility for languages, and she accompanied him everywhere on his travels. They shared a period of great anxiety during the service of their sons in the RAF during the Second World War. He became deeply involved in his son Leonard's scheme for the support of terminal patients and was mainly responsible for drawing up the memorandum of association and articles of the Leonard Cheshire Homes Foundation. Accordingly, in 1950, after prematurely retiring from his Chair, he abandoned Grey Walls and moved to the grounds of the Cheshire Home at Le Court in Hampshire. He bought the old laundry cottage and converted it with the help of his old friend Harold Hughes.

For some time he continued to lecture in London and to write; and it was in that period that he was drawn into the public activities which have already been mentioned. In 1962 the death, after a long illness, of his first wife brought a long and very happy marriage to an end. In 1963 he married Dame Mary Lloyd, DBE, who had been Director of the Women's Royal Naval Service from 1950 to 1954. Another happy marriage ended in 1972 after illness had failed to give way to successive operations. Thereupon he firmly decided to lead an active independent life in Laundry Cottage. In his son Leonard's words,

He felt that he had a duty to keep himself up, if that is the right phrase, in short, to make certain that he had a purpose for each day and each day had a meaning. He made it a point of honour to keep Laundry Cottage in top condition, and to make certain that everything was handed over to my best advantage.

During his last year he had increasing bouts of severe chest trouble, but right up to the end he was able to garden two or three hours a day.

He continued to pay and receive visits, not only from the young friends who worked on new editions of his books. He was only twenty miles from the Whitchurch home of his old friend Lord Denning, who writes:

In his last year he drove over by himself in his ageing car to see us, full of good spirits and his mind as clear as ever; and just a few weeks before he died we ourselves drove over to see him. Right up to the last he retained his interest in the law, and all that was going on: and he loved to recall the interesting personalities of his time.

I last saw him in 1975 at Harrogate, where he had driven with a friend, and was happy to find that he had retained his genial temperament and his old physical and mental alertness. And Edward Burn, who had taken charge of his *Modern Real Property*, wrote to me:

I shall remember a party given by Butterworths to celebrate his ninetieth birthday. He was presented with a leather-bound set of the current editions of his four books. At the end of an unfaltering and urbane reply, he said that he was already looking forward to a similar party ten years hence. Sadly that can never be.

An accomplished letter-writer, with a natural style of simple elegance, he revealed himself without display but without embarrassment. He would express the most generous appreciation of the work of his younger colleagues; and to those of a much later generation who helped him with his later editions and eventually took them over from him he gave his complete intimacy and confidence. Not only did he treat his correspondents as equals, but he expressed himself to them with the most perfect candour.

His letters to Michael Furmston contain ample instances of a genuine and disarming humility. 'I seldom see the obvious!' 'A very interesting talk and one that shows me how infernally ignorant I remain after messing about with the law for so long.' 'It is a vast comfort to know that you will be having a look at these bits and pieces. Please do not mince your critical words. It is much better to be frank, e.g. superfluous, too long, not quite accurate, plain wrong, obscure, too brief to be good, misleading, and so on.'

And to myself: 'Retirement for the likes of you and me is no

danger, in fact a relief, for we can still pursue our trade of scribbling, but I do find that I become slower and slower in the art of composition.' Of his obituary of his old pupil Fifoot, which appeared in the Academy's *Proceedings* for 1975: 'Do please cast your critical eye over my laboured memoir of Cecil and speak your mind out. For some reason or other I found it very difficult going and decided that I have grown too old for this sort of job. So hack it about to your heart's content.' Needless to say, I did not.

Such letters confirm the inference that must be drawn by anyone familiar with the successive editions of his books, that he was the least opinionated of academic lawyers. Yet he was in no doubt of the quality of his works. In a letter of 8 April 1976 to Michael Furmston about the price to be put on a new edition of *Cheshire and Fifoot on Contract* he said 'I'm not worried too much about our rivals, for I'm conceited enough to believe that ours is now firmly established as number one!'

I am impressed by the ample evidence, in letters to me, of personal friendship between Cheshire and the much younger men to whom he entrusted the editing of his books. Thus Michael Furmston, who was associated with him for ten years, says:

Over the last seven or eight years I must have been across to Laundry Cottage about every six months . . . I must say I found him a man of great charm and friendliness whom I grew to like very much.

Peter North says:

Geoffrey made a deep impression on me at the first meeting—an impression such that we were quickly firm friends.

Edward Burn speaks of him as

a friend and host to us both with his wife Dame Mary at Empshott.

On looking through my own files, I find that the same tone of intimacy goes back over fifty years to the time when he enlisted me as a collaborator in preparing the nineteenth edition of *Stephen's Commentaries*. Differences of age or seniority meant nothing to him.

It was the same with his contemporaries. Professor Ben Wortley, who had read *Private International Law* for him in manuscript, reports that

He was greatly liked at international gatherings, where friends regarded him as a typical product of Oxford and of his generation, unassuming, humorous, scholarly and a perfect gentleman.

And Lord Denning tells me:

He often came to Lincoln's Inn, of which he was an Honorary Bencher, especially when he was lecturing to the Bar students. He was the favoured companion for his dry wit and his interest in all that was going on. He loved to recall the interesting personalities of his time.

And, of his reputation,

He was beyond doubt the most outstanding academic lawyer of his time. All his writings were clear and accurate. His books had a great influence, not only on students, but on the whole profession. Whenever I sit in Court, always on my desk there is the latest copy of *Cheshire and Fifoot's Contract*. When a case comes up on Real Property, we have his book on it, and also on *Private International Law*.

Beyond doubt the opinions which he expressed carried much weight with the Court, and were treated with greater respect than many judicial utterances.

In a review of a history I wrote of the Oxford Law School L. C. B. Gower alluded to

that truly great holder of the Vinerian Chair to whom he dedicates the volume and for whom he constantly reveals the veneration that we all feel.

All of this, and much more, is summed up in a tribute that Lord Edmund-Davies wrote for Cheshire's ninetieth birthday:¹

Despite the passing of the years, his gaze is as keen as ever, his mind as sharp, and his frame is as spare as when he was half his present age.

He declares that he no longer reads the Law Reports, and so great is my trust that I actually believe him. But he cannot thereby shrug off his responsibility for his shaping of legal education, nor must we be unmindful of the great public service he rendered by doing so. He began teaching as long ago as 1909, at Aberystwyth, and since those far-off days thousands of students have passed through his hands and been influenced by his publications. It was, for me, a transforming experience to be one of their number and my debt to Geoffrey Cheshire cannot be repaid. I have the (possibly unenviable) distinction of having read law longer before beginning to practise it than, I believe, almost anyone else on the Bench, and I therefore claim to speak with some authority when I say that he was of unparalleled excellence as a tutor. He was quick to realise the latent abilities—and weaknesses—of his students. Probably few readers of this august Journal have ever seen the miraculous Harlem Globe Trotters play—they feint with the ball, they entrap, they lead on, and all this with lightning quickness. And what they do with a ball and with their opponents, Cheshire did with a legal

¹ JSPTL for March 1976.

point and with his students, while wearing an air of apparent lethargy and puffing away at a small pipe throughout the tutorial. By the time he had finished with it (and with you) you were left stimulated and provoked and very, very humble. Not that he ever 'scored off' you. On the contrary, a quiet 'Ye Gods!' would usually be as far as he went in expressing condemnation of a poorish paper, and it would preface a patient probing of the process which had led you to your unacceptable conclusions. It would in truth be impossible for me to exaggerate his influence on my life (though this he characteristically refuses to accept), and he bears the heavy responsibility of having markedly propelled me along the road leading to the Bench.

His outstanding quality as a tutor, lecturer and writer was clarity. He wrestled with a problem until in his own mind he had reached as satisfactory a solution as he felt he could attain. There followed the task of working out the best way to convey the conclusion he had arrived at. It was often a long process, for he was always his own sternest critic, but the results were admirable. I think it must be well-nigh impossible for those who started reading law before, say, 1930 to realise the greatness of the service he rendered to legal studies by his text-books, beginning in 1925 with his *Modern Law of Real Property*. Not everybody regards the topic as captivating, and before Cheshire tackled it, most of the standard books on the subject were repellent in their sheer stodginess, filled as they were with paragraphs extending unbrokenly over several pages, and composed of labyrinthine sentences confusing even the diligent student. But Cheshire contrived to be both clear and stylish, he transformed the *look* of a page, he lightened the drudgery of learning. Indeed, a member of the Court of Appeal told me recently, 'Cheshire's books cheered me no end'. And it goes without saying that this admirable result was achieved without ever sacrificing soundness. On the contrary, his views have always commanded as great respect on the Bench as among practitioners.

I was one of the guinea-pigs for his *Private International Law*. He was working at it for some years before it appeared in 1935, he tried it out in his lectures, and it is even remotely possible that, by *our* probing, we in our turn contributed something to make it the admirable book it is. He, on the other hand, convinced me and, I feel sure, many others, of the value of Private International Law as a subject of academic study. His work did a great deal to remove the neglect with which it had formerly been treated in legal education, and, as I learnt in my later travels, it brought him international recognition as an outstanding jurist of the highest distinction.

As a lecturer, his was the *quietest* manner I ever came across. But his audibility was nevertheless as admirable as the clarity of his material, and in this respect, as in so many others, he was the model academic. The distinction he attained was great, culminating in a regrettably brief tenure of office as Vinerian Professor of English Law. But none

of the high honours bestowed on him is more deserved than the admiration, affection and gratitude he has evoked from his students. Someone has said that education is what survives when what has been learnt has been forgotten. Many of us who had the privilege of being taught by Geoffrey Cheshire have unfortunately forgotten much of the substantive law we then learnt. But we have not, I hope, lost sight of the value of clarity of thought and of expression which was the outstanding characteristic of his contribution to legal education. I, for one, am exceedingly glad of this opportunity of telling him in his ninetieth year exactly what we think of him.

[I am greatly indebted to Geoffrey Cheshire's two sons, Group-Captain Leonard Cheshire, VC, DSO and Christopher Cheshire, for information about his private life and for permission to reproduce the photograph; to Times Newspapers Ltd. for permission to use material from the obituary which appeared in *The Times* on 30 October 1978; to Lord Edmund-Davies for permission to reprint the appreciation he wrote for the *Journal of the Society of Public Teachers of Law*; to Geoffrey's old pupils and friends and the editors of his books for the letters they so willingly sent me in return for my troublesome requests.]

F. H. LAWSON