Book Review

JUST WITHIN THE LAW, MEMORIES AND REMINISCENCES. by Henry Cecil, (1975) pp. 220, Hutchison of London.

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Benvenuto Cellini opens his Autobiography with these words: "All men, of whatsoever quality they be, who have done anything of excellence, or which may properly resemble excellence, ought, if they are persons of truth and honesty, to describe their life with their own hand." Henry Cecil, who is a double-first; a two-career man, who has achieved excellence in law under his own name, Henry Leon; and in letters under the name of Henry Cecil, has taken Cellini's words to heart. He has described his life with his own hand. He has not put himself into his book in the sense that Cellini has. He, himself, is not the matter of his book. He makes no startling personal revelations. He does not depict himself at full length and naked. With wit and charm, combining entertainment and instruction, he writes of what he knows, and what he has seen and done, during his passage through life, with emphasis on his two careers. "What I have tried to do," he explains, "is to recount as accurately as possible events in my life which have some relationship to the two professions which I have been lucky enough to have been allowed to follow".[1]

Henry Cecil has added to the gaiety of his generation with his books — Brothers in Law, Sober as a Judge, The Painswick Line, among a score and more of them, which deal with the lighter side of the law. While these books were being written, Henry Leon gave an additional assurance that he was justifying his time on this earth by serving as a County Court Judge.

He was called to the Bar by Gray's Inn in 1923. He was appointed a judge in 1949, and retired on his sixty-fifth birthday, after eighteen years in judicial harness.

In this review I propose to concentrate on one theme which Henry Cecil returns to on several occasions in this book. This theme, the present state of the law and its betterment, has always been central to his interests, both as a judge and as an author.

Henry Cecil has reservations about the impact which legal aid has had on the legal profession. His fear is that professional standards will be lowered. The road to financial success at the Bar is no longer a stiff uphill climb. In a book which was

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1. page 7.

published in 1958, he contended that an advocate needs four qualities to succeed at the Bar.

1. The ability to understand quickly what is said to him and the patience to listen to it.
2. The ability to express himself in simple and intelligible language.
3. Integrity.
4. The capacity for hard work.[2]

Such was the situation in 1958. He now suggests that "there is no danger to the legal profession in the sudden emergence of the Bar as a lucrative profession for almost anyone who gets into it."[3] He refers to a survey made by a Times special correspondent in 1953 which revealed that the earnings of barristers of three years standing averaged under £250 per annum, that those of from five to nineteen years were under £800 and that those f twenty years standing or more were £2700. "Although Legal Aid had been introduced in 1949," he comments, "it was not for about ten years from its introduction that its beneficial effect upon the legal profession began to be felt. But from then on not only had the average young barrister an excellent prospect of making a substantial income as soon as the six months' qualifying period of pupillage had been served, but many more scholarships and grants were available to the law student than were available when I came to the Bar".[4]

In more robust days it used to be said that the King can make a nobleman but that he cannot make a gentleman. Today this saying might be modified to read: a Cabinet Minister can appoint a judge but he cannot guarantee to appoint a good one. That rests with the person appointed, who can be given some help — such as training for the job, or a probationary period before his appointment is confirmed, or sabbaticals so that his mind may be fallow and be refreshed by new, up-to-date, ideas.

Henry Cecil once offered a suggestion, which he claims would have made him a better judge had it been adopted before his appointment. "Each judge on appointment," he suggests, "should be warned by a senior judge of the dangers of abuse of power and particularly against:

1. Making unfair remarks.
2. Summing up for a conviction.

2. Brief to Counsel, page 21 et seq.
3. page 104.
4. page 24.

3. Not apprehending the fact that the average witness is a stranger to the court and needs help."[5]

When judges fall short of a reasonable standard of perfection, in his opinion, it is because power goes to their heads. But he maintains stoutly that there are but few black sheep in the judicial fold. "Most judges have a judicial sense," he says, "and, even if they are not great lawyers or even good judges of fact, they do understand how essential it is that both parties should feel that they have had a fair trial, even though the losing party may resent the judgment".[6]

He confesses that he tried hard not to be an over-talkative judge, but that despite his effort he probably did not succeed, "I am sure that it would have been more satisfactory if I had said less", he states. "I should have had the words of verse 2 of Psalm 39 in front of me: "I held my tongue and spake nothing; I kept silence, yea, even from good words; but it was pain and grief to me".[7]

Henry Cecil has grave reservations as to the effectiveness of the present oath that is taken by witnesses. He characterizes it as ridiculous, explaining that a witness is asked to swear by Almighty-God that the evidence he gives shall be the truth, the whole truth and nothing but the truth.[8] An honest, intelligent man knows that his recollection of facts may be wrong. "He could easily swear that he would do his best to tell the truth but he is not allowed to do that." He must swear to tell the truth — the whole truth. In many cases rules of evidence will not permit him to tell the whole truth. For example, a man witnesses an accident and goes home and tells his wife all about it. Two years later he is summoned to Court as a witness. What he said to his wife about the accident would be a valuable check as to whether his recollection of the accident is correct. But the law says that hearsay evidence is not admissable.

Finally, a witness is sworn to tell nothing but the truth, but an honest man knows that something "that is not true may accidently stray into his evidence."

How might this unsatisfactory situation be remedied? Henry Cecil has his answer: "It would be far more satisfactory if witnesses were required to swear or affirm that they would do their best to tell the truth, and if this oath or affirmation were administered by the judge standing up, as it is in Scotland. This

5. The Hamlyn Lectures, 22 Series, The English Judge (1970) page 80.
6. page 74.
7. page 149.
8. page 151.

could be done in quite as dignified and solemn a way as the oath is administered at present, and it would be an oath which the witness could keep."[9]

In his Hamlyn Lectures, Henry Cecil made a good statement and asked a good question: "I have never yet understood why a man, who is thought to have committed a crime, should not be asked questions about that crime and why his refusal to answer questions should not be given in evidence against him, provided in each case that no improper pressure is brought to bear upon him. Why should a man not be asked to incriminate himself, provided he is not bullied into answering?"[10] Why, indeed!

In his present book, he rephrases this question and asks why it is that the recommendations of the Criminal Law Revision Committee, presided over by Lord Justice Edmund Davies, that the right of an accused person to remain silent should be modified, are so strenuously resisted. Here is his answer: "Although I know personally some of the opponents of this recommendation and am fully aware of their complete bona fides, I cannot help thinking that they are unconsciously motivated by their desire that a lawyer defending a man on a criminal charge, shall have as many lawful methods of obtaining an acquittal as he can. More lawyers are concerned with definding than with prosecuting, and successful defences are likely to add such lawyers' reputations and increase their incomes".[11]

One wonders if his answer does not hit the nail squarely on the head. Commonsense in this matter should be served. It is, surely, a breakdown of law when a guilty man escapes, just as it is when an innocent man is convicted. In this day and age, why should the law serve the purpose of the guilty. In Jeremy Bentham's words (which Mr. Cecil quotes): "If all criminals of every class had assembled, and framed a system after their own wishes, is not this rule the very first which they would have established for their security? Innocence never takes advantage of it. Innocence claims the right of speaking, as guilt invokes the privilege of silence".[12]

One statement near the end of his book indicates that Mr. Cecil is no soft-hearted sentimentalist, but a humane realist, fully aware of the facts of present-day life. He is speaking of crime and prison reform and he says that no matter what view is taken about the philosophy of punishment one fact is clear — the public must be protected from violent people. "Those who by

9. page 152.
10. op. cit. 82.
11. page 194.
12. page 196.

their conduct have shown themselves incapable of restraining their violent impulses," he says, "whether the violence is for a sexual object or for the purpose of robbing a bank, should be detained in some secure place indefinitely, unless and until medical science is able to show that they have been cured. But, if people are going to be detained indefinitely, they must be detained in decent conditions. They must have interesting and rewarding work, recreation, entertainment and, if possible, though I realize the great difficulties which are involved in this suggestion, conjugal visits".[13]

There is much to provoke though in Henry Cecil's book, particularly on the theme I have tried to develop in this review — the present state of the law and its betterment.

When Galileo put his signature to a document which denied that the earth makes a yearly journey around the sun, as he put down his pen, he murmured to himself, "Yet it does move". When one looks at the state of the law today, he might well echo Galileo's words. The law does move. But the said thing is that its pace is so slow.

13. page 212.