

Lord Chief Justice Holt

by MASTER LORD LANE

(An address delivered in Gray's Inn Hall on 7th November, 1989)

On 7th November, 1989, Master Lord Lane delivered an address in Hall to mark the tercentenary of the appointment of his predecessor Sir John Holt as Chief Justice of the King's Bench in 1689. Holt's portrait, recently restored to its place on the north wall of the Hall, opposite that of Master Lane, was decorated with a wreath. This unique occasion had filled the Hall to capacity and, to recognise its special character, the seating had been so arranged that each mess of four included a Benchers, a barrister and two students. This generated a spirit of friendliness and personal contact between the generations, and Master Lane's lively portrayal of Holt's remarkable character and immense importance in legal history was received with enthusiasm. The Treasurer, Master Lord Wigoder, Q.C., prefaced the address after the conclusion of dinner. At the end of the evening Master Lane came down to the body of the Hall, meeting members of the Society individually. In the Editor's mess there was a student from Singapore eating his first dinner in Hall. Already he was deeply convinced of the utility and importance of dining in forming the character of the Bar. Certainly he will never forget that at the end of his first dinner the Lord Chief Justice came and sat opposite him. In no other profession do there exist such opportunities for contact between the generations.

* * *

The Treasurer, Master Lord Wigoder, Q.C., said:

Mr. Junior, tonight is the first of, I hope, many occasions on which the four estates of Gray's Inn meet together for dinner. The four estates in order of their importance to the Inn are firstly, the staff, and we are delighted to see some of the senior members of the staff here this evening. Secondly, the students, thirdly, the barrister members of Hall and lastly the Benchers, and we meet together in order to indulge in a certain amount of gossip, in order to get to know one another and if I may say so, on any future occasion of this sort, I should be very cross indeed if the students do not accept the invitation of the Benchers to come upstairs and have a drink before dinner starts, because we would be delighted to see you and you are most welcome, of course, to come and join us. So we are here to exchange experiences and perhaps above all to learn from one another's mistakes, and, if I may say so on behalf of the Bench, we have together committed a very large number of mistakes, from which I hope you will be able to learn. If I hear somebody say "speak for yourself", I will deal with that person afterwards. Mr. Junior, tonight is a Sponsorship Night, it is an occasion when there are some spondees here, which I think may be the right word. There may be a few sponsors here, and if so, we welcome them too. It is our custom on a Sponsorship Night on a Tuesday to have a talk in Hall delivered during dinner, which gives us a chance of digesting the very large and very satisfying main course that we have just enjoyed, a talk delivered by a speaker of distinction, on a subject of interest to the Inn. We could not have

a speaker of greater distinction than Master Lane, who has been Lord Chief Justice now for some nine and a half years, and we could not have a subject of greater interest to the Inn than Sir John Holt, who was a Gray's Inn man himself and who was his distinguished predecessor as Lord Chief Justice three hundred years ago this year. Mr. Junior, it is with eager anticipation that I now ask Master Lane to address us.

* * *

Master Lane said:

Master Treasurer, ladies and gentlemen, until I was invited by the Treasurer to make this address to you, there were only two Chief Justices, apart from myself, in whose idiosyncracies I had become interested. The first was Odo, Justiciarius et Princeps Totius Angliae, 1087. The first of the number; certainly the richest; almost certainly the most enterprising. He ended up in prison at Rouen, having been arrested by his stepbrother, King William the First. The second was George, Baron Jeffreys of Wem, in common parlance, unaccountably demoted to the Circuit Bench as "Judge Jeffreys". This year is the three hundredth anniversary of his death. It is also the year when the Inner Temple bought and hung a portrait of him. In my capacity as an Honorary Bencher of that Honourable Society, I had to make a speech of welcome to the portrait. That entailed reading a great deal about Lord Jeffreys. He was a man with an ugly reputation not wholly deserved. I mention this not merely because he and I went to the same school, but also to illustrate the fact that the biographers of Chief Justices seem to have only two colours in their paintbox, black and white. Of Jeffreys, Burnet wrote: "All people were very apprehensive of very black designs when they saw Jeffreys made Lord Chief Justice who was scandalously vicious and was drunk every day, besides a drunkenness of fury in his temper that looked like enthusiasm. He was not learned in his profession and his eloquence although viciously copious was neither correct nor agreeable".

It may interest you to know that Sir John Holt was led by Sir George Jeffreys, as he then was, in a case in 1680, in which they appeared for the prosecution upon the case of a bookseller who was charged with publishing a seditious libel. You might like to look it up. It is the case of *R. v. Smith*, 7 St. Tr. 931. Jeffreys made a fighting speech regretting that since the defendant was only charged with a misdemeanour, his punishment could not be carried beyond fine, imprisonment, whipping and pillory. Whereupon the defendant, Smith, pleaded guilty. Probably the first example of plea bargaining. *Per contra* (there is nothing like a bit of Latin to add tone to a speech) by the opening paragraph of one of the biographies of tonight's subject, Sir John Holt is described as follows; "The unprincipled, ignorant and incompetent Chief Justices of the King's Bench, who have been exciting alternately the indignation and the disgust of the reader, were succeeded by a man of unsullied honour, of profound learning and of the most enlightened understanding, who held the office for twenty-two years, during the whole of which long period, often in circumstances of difficulty and embarrassment, he gave an example of every excellence which could be found in a perfect magistrate". It may have struck you, as it struck me on hearing those words, that if they were true, John Holt must have been a thoroughgoing prig, a crashing bore, probably spending all his waking

hours reading the seventeenth century equivalent of the Law Quarterly Review. The mere fact that he was a member of this Inn, is cogent evidence that such a conclusion must be wrong, and indeed it is. But let us consider his undoubted talents.

A Chief Justice's job specification, though no one is stupid enough to tell prospective Chief Justices what the specification is before appointment, seems to have changed very little over the centuries, except that nowadays there is more of everything. It involves a great deal of hard work in Court. All the "hot potato" cases land on his desk. That is to say, the difficult points of law, the politically sensitive appeals, and the dangerous cases. He is responsible for administering the system which means nowadays organising the Queen's Bench Division and the Court of Appeal Criminal Division, looking after the Judges and acting as a sort of mediator between the Judiciary and the Lord Chancellor's Department. He has to try to maintain the independence of the Judiciary in the face of an ever more powerful legislature and an ever more powerful executive; where necessary taking his seat in the House of Lords when legal matters are being debated. Finally, he has a full social programme which involves attending functions out of Court hours. Many are tedious; some, however, like tonight's, are highly congenial, when he finds himself among friends and colleagues.

John Holt was the rare bird who was able to make a success in all those spheres, a talent for which I envy him. He had the happy knack of being able to distinguish between genuine living law and the antique clap-trap which encumbered so much of the law in the seventeenth century. He did not wander much into philosophy or literature, nor did he much overburden himself with the Roman Civil Law, though he was well acquainted with its fundamentals. Through his penetrating analysis of the law of bailment in *Coggs v. Bernard* (1703) 2 Ld. Raym. 909, he shows that he was not unaware of the principles of Civil Law. Holt, not without reason, complained of the indifferent way in which his judgments were reported. He described the reporters' efforts as 'skimble skamble stuff'. It was left to Lord Raymond, who had been Holt's pupil, to compile the real reports upon which we can judge the excellence of Sir John Holt. Lord Raymond was the last Gray's Inn Lord Chief Justice, so we have a thread of continuity running, albeit gossamer thin, through the three hundred years of the Inn's history down to today.

Holt was a wise man, as one would have expected, and he was cautious enough never to dabble in party politics. One observes, with a certain amount of present day interest, that he always remained on courteous terms with Lord Somers, the Lord Chancellor under William the Third, but there was never much familiarity between them. In April 1700 King William removed from office Lord Somers, who had refused to resign, and offered the Great Seal to Holt. To the King's undoubted surprise, and you can imagine his face, came the reply, "I feel highly honoured by your Majesty's gracious offer, but all the time I was at the Bar I never had but one cause in Chancery, and that I lost, so I cannot think myself qualified for so great a trust". Then, as now, there was a good deal to be said for preferring the post of Chief Justice where one is less vulnerable to the long knives of the monarchs or ministers. I don't suppose any of you have read *Coggs v. Bernard*, but if you haven't it is worth a glance. The six sorts of bailment are set out, and the degree of care required of the bailee in each

case is explained. Besides *Coggs v. Bernard*, Holt brought the law out of the feudal backwaters into what the times required, times when trade and manufacture were starting to flourish in earnest and as a matter of common everyday occurrence were crossing national frontiers. Colonies were becoming more and more important to merchants and there was a pressing need for clarification of the commercial law relating to negotiability, bills of exchange, insurance, indeed, all mercantile law. This Holt achieved both by judicial decisions and by an Act of Parliament of which he was both the progenitor and the midwife. What Holt started, Lord Mansfield expanded and polished. On the humanitarian level, Holt was the first to pronounce in *Smith v. Brown* (1705) Cases Temp. Holt 405 "As soon as a slave breathes the air of England he is free. One may be a villein in England, but not a slave". A slave had been sold in Virginia, where slavery was legal, and an action was brought in the King's Bench for the price. The declaration stated that the defendant was indebted to the plaintiff in the parish of St. Mary-le-Bow in the Ward of Cheap in the City of London for a negro slave there sold and delivered. The action would have been maintainable, said Holt, if the sale had been alleged in Virginia, but not a sale alleged in England. "A human being in England was never considered as a chattel to be sold for a price and when wrongfully seized to have a value put upon him in damages by a jury like an ox or an ass". There are numerous examples of those iconoclastic actions of Holt. There was a statute of Elizabeth which penalized those who did not attend their own parish church on Sundays. Holt boldly held that a man is excused if he goes to another church instead. "Parishes were instituted for the benefit of the people, not of the parson, that they might have a place certain to repair to when they thought convenient, and if every parishioner is obliged to go to his parish church then the gentlemen of Gray's Inn and Lincoln's Inn must no longer repair to their respective chapels, but to their parish churches otherwise they may be compelled to it by ecclesiastical censure". (*Britton v. Standish* (1704) 6 Mod. Rep. 188).

It was at his suggestion that an Act was passed allowing witnesses called for the prisoner to be examined on oath (1 Ann. St. 2 c. 9). He ordered the fetters to be struck off a prisoner who had been brought into the dock in irons. "There is no danger of escape or rescue here" Holt said. He might not have been so cocksure three hundred years later. I regret to say nowadays experience has shown that it is often unwise to order handcuffs to be removed from some "category A" prisoners when they are brought into the dock in the Royal Courts of Justice in case they jump over the bars and attack the judge sitting on my left!

It will not have escaped you that this was the time of the great Revolution of 1688, the arrival of the Prince of Orange. Holt, as one would have expected of one so loyal, took no part in the revolutionary movement until after King James had left the Realm. He was fiercely independent, and scared of no one. Indeed, to go back to 1686, when he was Recorder of London, he held that although the King by his prerogative orders was entitled to enlist soldiers even in time of peace, yet since there was no statute subjecting those soldiers to any discipline or punishment, they could not be punished for any military offence, being only amenable to the same laws as the ordinary citizen. This decision struck at the foundation of the King's right to maintain a standing army independent of Parliament. The

Recordership of London was held at the pleasure of the Crown, and Holt, as he must have known would happen, was inevitably removed from office. He was replaced by some Serjeant-at-Law called Tate, who was a renowned lick-spittle, who would have been prepared to do anything in order to keep his job. Once the monarch had abdicated, Holt then spared no effort to bring about a settlement in order to establish a constitutional monarchy.

I pass over the intricacies which happened thereafter, except to say that it was important for someone to be found who could head the judiciary, and would command respect. A vote was taken amongst the Privy Councillors. They were asked to make a list of the twelve persons each deemed most fit to be judges. Each of the lists is said to have been headed by the name of Sir John Holt: accordingly he was appointed the Chief Justice, in due course, and was sworn in before the Commissioners of the Great Seal on 19th April, 1689. By a strange quirk of fate, it was on the day before that, on 18th April, 1689, in the Tower of London, that the ill-fated Lord Jeffreys perished, as his biographer gratuitously added, "from a complication of disorders, aggravated, no doubt by his drunken habits, but most probably by his recollections and his fears".

To return to the more cheerful subject of tonight's discourse, no doubt those who had appointed him were nervous whether the great promise shown by Holt at the Bar and in his Recordership would be fulfilled when he was elevated to the post of Chief Justice. One never knows how people will react to that sort of elevation. I can think of some who, at the Bar, have been fearless champions of the working man, who have spared no pains to promote the cause of the plaintiffs who have suffered injuries at work allegedly through the fault of their employers, who when they have been elevated to the Bench have never given judgment for one single plaintiff during the whole of their career. There are those, who at the Bar have bitterly complained that all judges seem to think that the sun shines out of their Archbalds, only to realise when elevated to the Bench that is exactly what the sun does. Happily, Holt disappointed no one. He fulfilled all expectations.

It was Holt's part in the contest about parliamentary privileges which has perhaps earned him the most praise for courage and discrimination. This was best exemplified in *Ashby v. White* (1705) 2 Ld. Raym. 938. Corrupt returns were made by the bailiffs of Aylesbury. The defeated candidates who had a large majority of legal votes, being Whigs, knew that a petition to the House of Commons would be useless. It was therefore resolved that several of the electors whose votes had been wrongfully rejected should bring actions in the Court of the Queen's Bench against the returning officers. Ashby was the first plaintiff and he, clearly making out his case, received a verdict with large damages. The defendants moved in arrest of judgement on the grounds that an action at law could not be maintained by him, because the only remedy was by petition to the House of Commons. Holt found himself sitting with three judges who, being Tory inclined and timid, gave opinions in favour of the defendants. Holt's dissenting view was that a private injury being sustained from breach of duty by a public officer, compensation ought to be given by legal process. Knowing that he was about to be, so to speak, overruled by his fellow judges, he delivered a judgment which even today excites admiration for its bold approach and felicitous language. Let me quote one short passage:

“My brothers differ from me in opinion, and they all differ from one another in the reasons for the opinion they have expressed. My brother Gould, thinks no action will lie against the defendant because, as he says, he is a judge; my brother Powys, indeed says he is no judge but quasi a judge; while my brother Powell thinks that the defendant is neither a judge nor anything like a judge but only an officer to execute the precept to give notice to the electors of the time and place of election and to declare which candidate has a majority . . . If a returning officer corruptly refuses a vote and is sued before me, I will direct the jury to make him pay well for it. It is a great privilege to choose such persons as are to bind a man’s life and property by the laws they make. This privilege belonging to the plaintiff, has been wantonly violated by the defendant; and I am of the opinion that, instead of arresting the judgement, we ought to allow the plaintiff to have execution for the damages which the jury has awarded him”.

That was not the end of the story. A writ of error was brought into the House of Lords where the Whigs had the majority. There, on a division, the judgment of the Court of Queen’s Bench was reversed by a majority of 50 to 16. This threw the House of Commons into a fury. A constitutional crisis ensued. This is not the occasion for me to embark upon that story. It would take too long. It is said that the Serjeant-at-Arms of the Commons presented himself before the Chief Justice sitting in his Court, and he summoned the Chief Justice to appear at the Bar of the House to purge himself of his contempt. “Begone”, said Holt in a voice of thunder. Soon afterwards, goes the story, came the Speaker in his robes and full-bottomed wig, attended by many highly privileged members of the House and said, “Sir John Holt, Knight, Chief Justice of Her Majesty’s Court of Queen’s Bench, in the name of the Commons of England, and by their authority I summon you forthwith to appear at the Bar of the House to answer the charge there to be brought against you, for diverse contempts committed in derogation of their ancient privileges”. His Lordship replied in a calm voice this time, “Go back to your Chair Mr. Speaker within these five minutes or you may depend upon it I will lay you by the heels in Newgate. You speak of your authority, but I tell you that I sit here as an interpreter of the laws and a distributor of justice and if the whole House of Commons were in your belly I would stir not one foot”. Good stuff. I wish it had happened today. Whereupon, concludes the story-teller, the Speaker quailing under that rebuke quietly retired with his bodyguard, and the Commons, terrified to contend longer with such an antagonist, let the matter drop. It makes a good story anyway!

That Holt was never priggish or self-satisfied is demonstrated by his earlier life which exorcises the ghosts of any intolerance or hubris. He is said to have been remarkably idle and mischievous as a boy. As a commoner at Oriel College, Oxford, in 1658 he was prone to great irregularities of behaviour. He indulged not only in “licentious gratifications” which was, no doubt, the seventeenth century euphemism for “sleeping around”, but he was also said to be in the habit of what would nowadays be called, “mugging”. One story, I hope is apocryphal, relates that, when in the role of Chief Justice, he went on circuit. There he recognised a man who had been convicted before him of a capital offence as one of his own former accomplices in a robbery. He thereafter visited this man in jail, and enquired how the rest of the gang had fared. “Ah, my



SIR JOHN HOLT
(CHIEF JUSTICE OF THE KING'S BENCH 1689-1710)
(Portrait by Richard van Bleeck destroyed in the second World War)

Lord," said the man, due to be hanged the next day. "They are all hanged, but myself and your Lordship!"

There are other stories, but this was intended to be a short address and it would only weary you if I were to relate them. But, on second thoughts, you might like to hear one more. Holt was largely responsible for ending the trials for witchcraft. On one occasion he was presiding over the trial of what was called "an old crone" for sorcery. The spell she was alleged to have used with great effect was produced in evidence. It was an old piece of parchment with Greek hieroglyphics. The Chief Justice asked to be shown the document. Having examined it he turned to the jury and said, "Gentlemen, once when I was young and out of money, my friends and I went to this woman's house, which was then a public one, and having no money to pay our bills, I hit upon a scheme to avoid the necessity of paying. I saw that her daughter was shaking with the ague. I pretended I had a spell which could cure her and I wrote the Greek lines, which you see on that parchment before you, and gave it to her in place of payment for our lodging, so that if anyone is punishable it is I and not this poor woman". I should add that Holt's cure was effective. The girl recovered!

Before I sit down, let us turn to look at the portrait, which hangs above you there, of the great man. In those days, Chief Justices were handsome. The portrait is in fact a copy. We have Hitler to thank for the loss of the original. It happened in this way. Barnard's Inn was an ancient fifteenth century Inn of Chancery which was attached to Gray's Inn. Its students were a rumbustious lot. In 1454, they organized a fight in Holborn between the lawyers on the one hand and the citizens on the other. A good time was had by all except the Principal of Barnard's Inn, who found himself arrested and thrown into Hertford gaol for his trouble. Whether Master Treasurer would approve of that sort of vicarious liability I doubt. But I digress. John Holt was a great favourite of Barnard's Inn. That affection may have been due to the occasion when a party of the Brigade of Guards were about to open fire upon a rioting mob in Holborn. (Holborn seems to have been the seventeenth century equivalent of the football stadium.) Anyway, Sir John was there. Once again showing great courage he addressed himself to the officer in charge and said, "If you give the order to fire, and if one man is killed and you are tried before me, I will take care that every soldier in your party is hanged". He and his tipstaff then persuaded the mob to go home. Whatever the reason was, Barnard's Inn commissioned Richard Van Bleeck to paint a magnificent full-length portrait of the Chief Justice. It was presented to Barnard's Inn by Sylvester Petyt in 1702. Eventually it passed into the hands of the National Gallery in circumstances which are not recorded. It was abstracted thence by a Minister of the Crown in the 1930s to decorate his office. In 1938, Master Hilbery, that great servant of this Inn, found it there in the Minister's office, and used his influence to borrow it in perpetuity for Gray's Inn. It was hung on the Benchers' staircase on permanent loan. Unhappily, it was too big to move to safety and in 1940 the Luftwaffe destroyed it. How they can have done that and yet have failed to destroy Verulam Buildings can only be ascribed to Teutonic lack of taste or inexcusably inefficient bomb aiming. Portraits you can destroy. The reputation of people like Sir John Holt, probably the most distinguished son of this Inn, is indestructable. He is a model upon which all Judges might well seek to base themselves.