

**Excerpts from “THE ROAD TO JUSTICE” by
The Right Hon’ble Sir Alfred Denning, (Lord
Denning) then Lord Justice of Court of Appeal.
Hamlyn Lecture – delivered in September 1955.**

THE JUST JUDGE

Yet the only quality which the judges have to merit is, each and every one of them, seek to be fair. To this end there are many principles.

THE JUDGES MUST BE INDEPENDENT

The first and most important principle is that the judges should be absolutely independent of the Government. We regard the judges as standing between the individual and the State, protecting the individual from any interference with his freedom which is not justified by the law.

In the course of the debate in the House of Commons, Sir Winston Churchill went on to speak of the independence of the judges in words which I should like to repeat now for the benefit of those who have not ready access to Hansard.

“The principle of the complete independence of the Judiciary from the

Executive is the foundation of many things in our island life. It has been widely imitated in varying degrees throughout the free world. It is perhaps one of the deepest gulfs between us and all forms of totalitarian rule. The only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrine enunciated in years past by his brethren on the bench, past and present, and upon the laws passed by Parliament which have received the Royal assent. The judge has not only to do justice between man and man. He also-and this is one of his most important functions considered incomprehensible in some large parts of the world-has to do justice between the citizens and the State.”

Sir Winston spoke those words on an occasion when the independence of the judges was threatened, not by political pressure, but by financial anxiety. Their salaries had not been raised for over a hundred years and the increase in the cost of living made it difficult for them to maintain a way of life suited to the gravity of the duties they had to discharge. On this occasion

Parliament unanimously voted them an increase in salary.

NO MAN A JUDGE IN HIS OWN CAUSE

To ensure a fair trial, the second principle is that the judge must have no interest himself in any matter that he has to try. He must be impartial. No person can be a judge in his own cause and say that he must not have the slightest interest in the result of the case.

JUSTICE MUST BE SEEN TO BE DONE

It is yet another Lord Chancellor who teaches us the last lesson, that a judge must not have the slightest interest in any case depending before him.

Over a hundred years ago the Lord Chancellor of the day, Lord Cottenham, was a shareholder in the Grand Junction Canal Company. He had ninety-two shares in it. The company had a dispute with a Mr. Davies who claimed that the canal was his property. He placed a bar across it and threw bricks into it. The company applied for an injunction against the man. It was granted by the Vice-Chancellor and on appeal to

Lord Cottenham the Lord Chancellor affirmed the decree. Lord Cottenham did not disclose that he was a share-holder in the company. The House of Lords, after consulting the judges, held that the decree must be set aside. In the course of his speech Lord Campbell said:

“No one can suppose that Lord Cottenham would be, in the remotest degree, influenced by the interest that he had in this concern, but it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. It will have a most salutary influence when it is known that, in a case in which the Lord Chancellor of England had an interest, his decree was set aside.”

In that case the Lord Chancellor had a money interest: but any kind of interest is a bar. If a judge is a relative or personal friend of one of the parties, he is disqualified. Indeed, if there are any grounds on which anyone might think that he might be biased in favour of one side or the other, he must not sit to try the case. If in any of the cases by some oversight he should sit and then it is discovered that there was the mere possibility

of his being biased, his decision will be upset, even though the decision, as a decision, was quite correct. The reason is because it is of the utmost importance that every person should be able to feel that his case has been tried by an upright and impartial judge. It is settled principle of our law that justice must not only be done, but it must manifestly and undoubtedly be seen to be done.

A JUDGE MUST HEAR EACH SIDE

The third principle is that the judge, before he comes to a decision against a party, must hear and consider all that he has to say. No one ought to be condemned unheard. The best way, and indeed the only fair way, of reaching a correct decision on any dispute is for the judge to hear all that is to be said on each side and then come to his conclusion. If a party has not the knowledge or ability to speak on his own behalf, as is usually the case, then he must be entitled to employ an advocate to speak for him. The law is a science which requires long study and experience before a man attains proficiency in it and the ordinary citizen

cannot properly put his arguments before the judge except with the assistance of a trained lawyer. One of the most important safeguards of liberty in any country is the presence of a strong and independent body of advocates who will speak fearlessly on behalf of their clients regardless of the consequences to themselves. If a man who is charged with an offence is to have a fair trial, it is essential that he should be able to feel that his case will be put before an impartial judge by an advocate who will say all that is to be said on his behalf.

You may say that a man may not have enough money to employ an advocate, but in England there is no difficulty on that score. By our new system of legal aid, the State pays the expenses of all those who cannot afford it.

A JUDGE MUST ACT ONLY ON EVIDENCE

The fourth principle is that the judge must act only on the evidence and arguments properly before him and not on any information which he receives from the outside. This is very much bound up with the right of every man to be heard in his own defence. If his right to

be heard is to be a reality, he must know in good time the case he has to meet, and must know what evidence and arguments are to be adduced against him, so that he can refute them with other evidence and better arguments. It would be most unfair if the judge could act on other information which he received from an outside source for the accused would then be deprived of any opportunity of countering it or answering it. He would feel, quite rightly, that the decision was reached behind his back.

MODERN INSTANCES

The principle has never been doubted. No judge would now listen to private solicitation either in a criminal case or in a civil case which he is about to try and he would not take notice of any information about the case unless it was given in evidence properly before him in the presence of both parties. If the judge should inadvertently depart from this principle, his verdict would be upset.

The principle extends not only to judges but also to tribunals which are vested with judicial functions.

A JUDGE SHOULD GIVE REASONS

The fifth principle is that the judge must give his reasons for his decision for, by so doing, he gives proof that he has heard and considered the evidence and arguments that have been adduced before him on each side and also that he has not taken extraneous considerations into account. It is of course true that his decision may be correct even though he should give no reason for it or even give a wrong reason but, in order that a trial should be fair, it is necessary, not only that a correct decision should be reached, but also that it should be seen to be based on reason; and that can only be seen, if the judge himself states his reasons. Furthermore if his reasons are at fault, then they afford a basis on which the party aggrieved by his decision can appeal to a higher court. No judge is infallible, and every system of justice must provide for an appeal to a higher court to correct the errors of the judge below, no appeal can properly be determined unless the appellate

court knows the reasons for the decision of the lower court. For that purpose, if for no other, the judge who tries the case must give his reasons.

A JUDGE SHOULD BE BEYOND REPROACH

The sixth principle I would suggest is that a judge should in his own character be beyond reproach, or at any rate should have so disciplined himself that he is not himself a breaker of the law. Time and time again he has to pronounce judgment on those who have offended against the law. He has to rebuke the evil and support the good. He cannot well do this-he cannot without hypocrisy do it-if he himself has been found guilty of an offence against the law. I refer not to administrative offences like exceeding the speed limit but to grave offences which carry reproach in the eyes of the people, like being drunk in charge of a car. If a judge should be found guilty of such an offence, whilst holding office, most people would say he should resign but a very difficult question may arise if a man should have been found guilty some years ago and then afterwards be considered for appointment as a judge.

Should the previous offence be a bar to his appointment? If he is appointed, will he not himself take a lenient view of those guilty of the like offence? Or else take a harsh view, so as to show that he is not affected by his past guilt? This raises a serious moral issue. It may be said that, if the offence is not known to the public generally, then the man can properly be made a judge. But is this a proper attitude to take? Even if it is not known to the many, it is known to the few and it can at any time be made known to all the country through the medium of the newspapers. It could hardly be a contempt of court to make a true statement about it. The moral question seems to be the same whether the offence is publicly known or not. And upon the moral issue I would go back to Plato for he discussed this very matter over two thousand years ago in the third book of *The Republic*. He recognises that it is a good thing for a physician to have some personal experience of illness so that he can know better the feelings of his patients. Likewise it is good for an army officer to know what it is to carry a pack so that he can

know what the men have to go through. But Plato says that it is not right for a judge to have personal experience of evil-doing. If you are appointing men to a police force you will not act on the motto “set a thief to catch a thief.” So also if you are appointing a judge you will not, says Plato, appoint a man who has committed the whole catalogue of crimes on the theory that he knows best what crime is. You will appoint a good man whose knowledge should be his guide, not his personal experience. The reason he gives is because vice cannot know virtue but a virtuous nature, educated by time, will acquire a knowledge of both virtue and vice. The answer would seem to be therefore that a man should not be appointed a judge if he has been found guilty of a grave offence against the law even though it is not generally known. And when it is publicly known it is worse because the people will then point a finger of scorn as they did long ago saying:

“Who made the ruler and a judge over us.” Such scornful remarks destroy the confidence which people should have in the judges.

No one would doubt these principles: but the difficulty is to apply them to particular cases. Who is to say whether an offence is a grave offence which carries reproach in the eyes of the people? That is the responsibility of those who make the appointments. Much depends on their good discharge of it.

To end this discourse may I remind you of the importance of these principles by quoting the words of Sydney Smith over a hundred years ago: "Nations fall when judges are unjust, because there is nothing which the multitude think worth defending; but nations do not fall which are treated as we are treated..... Any why? Because this country is a country of the law; because a judge is a judge for peasant as well as for the palace; because every man's happiness is safeguarded by fixed rules from tyranny or caprice..... The Christian patience you may witness, the impartiality of the judgment-seat, the disrespect of persons, the disregard of consequences." These are the qualities which have bred in us our regard for the law and our respect for the judges who administer it.