

# Sir George Jessel: Master of the Rolls

ROY ST. GEORGE STUBBS\*.

*Winnipeg*

---

It has been well said that the great man is the man who achieves some worthy goal for the first time. Judged by this standard, Sir George Jessel, Master of the Rolls, the first Jew to hold judicial office in England, was a great man. But his claim to greatness may be placed on a broader and firmer foundation. He was great, not only because he was the first of his race to win judicial honours, but because he was a great judge — one of the three greatest equity judges in the history of British courts. He once gave out the opinion that Lord Hardwicke was the greatest equity judge, with Lord Cairns second, and himself third. He qualified this opinion by saying that, unlike Lord Hardwicke and himself, Lord Cairns never sat as a judge of first instance and thus, by being able to conserve his powers, had an advantage. His opinion has never been seriously questioned. As a great legal scholar of the present day, Professor A. L. Goodhart, has written: "That Jessel was right in ranking himself as one of the great equity Judges cannot be open to doubt: the only question is whether he was not the greatest of them all".<sup>1</sup>

Montaigne, the most modest of men, in presenting his *Essays* to the ages, says: "I have here made only a nosegay of culled flowers and have brought nothing of my own but the string that ties them". In presenting an estimate of Sir George Jessel, I have followed Montaigne's precedent. I have gone to the books for my facts and have contributed only the string by which they are tied together. The information about his life and career, which is available to one so far away from the scene of his activities, is not extensive. He has been neglected by men of the pen and no full length biography of him has ever been published.

George Jessel was born in London, on February 13th, 1824, the third son of Zadok Aaron Jessel, a coral merchant, of Savile

---

\* Member of the Winnipeg law firm of Stubbs, Stubbs and Stubbs. Author of *Lawyers and Laymen of Western Canada, Men in Khaki*, etc.

<sup>1</sup> Five Jewish Lawyers of the Common Law (1949) p. 22.

Row and Putney. As a Jew, the usual educational avenues of the day were not open to him. He attended a school for Jewish boys kept by Mr. Neumegen at Kew and matriculated at University College, London University, at the age of sixteen. Three years later, he obtained a Bachelor of Arts degree, with honours in mathematics, natural philosophy, vegetable physiology and structural botany. The next year he took his M.A., winning a gold medal in mathematics and natural philosophy. In 1846, he was elected to a fellowship at University College, which carried a grant of £50 a year for three years.

His education did not follow the accepted pattern of the times. Its emphasis was on mathematics and science, not on classics and the liberal arts, and his early training was to be reflected later in his work as a judge. He took to the problems of the law a mind that had given its allegiance to scientific, rather than literary pursuits.

Jessel's father had a keen business instinct. He speculated with good success in lands and on the stock market. Of the many irons he had in the fire, the most important, in its effect on his youngest son, was a directorship in a railway familiarly known as "The Old Worse and Worser". This railway was finally merged in the Great Western Railway. Before the merger, "The Old Worse and Worser" and the Great Western indulged in frequent litigation. During these legal battles, Jessel Senior made the acquaintance of several members of the bar. Men of the law made a strong appeal to him and his attraction to lawyers prompted him to set his heart on his three sons becoming members of the profession.

George Jessel was admitted as a law student at Lincoln's Inn, on April 15th, 1842, while still attending University College. He studied law first under Peter Bellinger Brodie, and later under E. J. Lloyd and Sir Barnes Peacock — all eminent men of the law in their day. While a pupil with Brodie, he formed a fast friendship with George Thomas Jenkins, a fellow pupil. He and Jenkins were called to the bar on May 4th, 1847, and took chambers together at 5 Stone Buildings, Lincoln's Inn. Jessel retained these chambers until his elevation to the bench.

Jessel spent his first years at the bar on sufferance, for the Jews were still under civil disabilities. As a Jew, no presumptions were made in his favour. He had to prove his mettle in an atmosphere, if not openly hostile, yet not quite friendly. To get the same results as the scion of a good family, or a favourite son of Oxford or Cambridge, he had to be just a little better. While making his way he was not popular at the bar. He had a hard core, an inner

toughness, that grated on the finer sensibilities of those nurtured in a softer school. He was more popular with the brief-giving fraternity than he was with his fellow barristers, for he had the qualities that appealed to them. With their client's interests in mind, they set a higher value on industry and ability than they did on good-fellowship and the social graces.

In less enlightened times than these, and in less enlightened countries than this, the Jew has always had to make a certain concession to prejudice. He has had to hide his better nature and present a tough exterior to the world. The sensitive plant cannot flourish in a hostile soil. It must develop a tough fibre or perish. Living in Victorian England, Jessel had to pay a price for survival, and the price he paid made him aggressive, self-confident, capable of shouldering others aside in pushing his own way to the front.

As a Jew, as the victim of racial prejudice, Jessel laboured under a handicap. In stating this fact, and in regretting it, as all men of liberal instinct must, let us not lose sight of another fact. As a Jew, as the heir to the traditions of his race, he had a decided advantage. Among no other people of the earth is intellectual accomplishment held in such high esteem as it is among the Jews. Among no other people is the intellectual climate so favourable to the development of talent. Talent may go begging among other people, and often does for want of a spark to ignite it — but not among the Jews. If a Jew has talent it will be developed, and external obstacles placed in its path (unless, as in Hitler's Germany, the last appeal is made to the fire and the sword) will but prove a stimulus to its full development. What is in a Jew, will come out. There is no wastage. The magnificent contribution to civilization of a people, who number less than one per cent of mankind, can be explained on no other premise.

Lord Bryce once suggested that Jessel was given his start at the bar by Jewish solicitors. Jessel's eldest son, Sir Charles James Jessel, denies this statement, saying that at the time his father was making his way there was no Jewish solicitor who could have kept a Chancery barrister in wig powder.<sup>2</sup>

Jessel found one of his first clients through his friendship with Jenkins. Jenkins was well connected. The solicitors for a large estate in which he had an interest felt under obligation to send him briefs. A man of retiring disposition, he had no liking for the forensic arena and he persuaded the solicitors to give the briefs to the clever friend with whom he shared chambers. Thus Jessel got

---

<sup>2</sup> An Eminent Victorian Lawyer (Blackwoods, January 1926).

an opportunity to prove his mettle — and opportunity was all he needed.

Jessel's father once asked the solicitor for "The Old Worse and Worser" to give his son a brief in an important case. The solicitor had already briefed two eminent counsel and was reluctant to add a young, inexperienced barrister as the third. But Jessel Senior persisted, and the solicitor, as a friendly gesture to him, sent Jessel what he considered a complimentary brief. When counsel were called into conference, neither the leader nor the junior had read his brief. In his annoyance, the solicitor turned to the third counsel, and said, "Perhaps, Mr. Jessel, you have read your brief". Jessel had done more than read his brief, he had chewed and digested it. He proceeded to review the case with such clarity that he gained a steady client in the solicitor. Thus, gradually, adding brick to brick, he built up his practice at the bar.

Jessel earned £52 — a pound a week — during his first year at the bar. His fees for his second year were £346, and for his third, £795. He reached the £1000 mark during his fourth year and, for several years after, his income remained at that figure.

Jessel's son says that the biggest fee his father ever earned in a single case was 800 guineas. This was Jessel's fee when he appeared in the House of Lords in the case of *Powell v. Elliott*. All he said was: "My Lords, I beg to withdraw this appeal". He was not paid 800 guineas for saying these eight words but for his advice before the appeal came into court. Like Whistler, he was being paid, not for the work of an hour or two, but for the knowledge of a lifetime.

On August 20th, 1856, when he had been at the bar for nine years, Jessel married Amelia Moses, a daughter of Joseph Moses of Vienna. His wife was heir to a substantial fortune. They had a family of two sons and three daughters. A baronetcy was conferred on his heir, Charles James Jessel, who followed the profession of arms, on May 25th, 1883.

In outward appearance, Jessel was only of ordinary distinction. He was of middle height and rugged build, in his later years inclining to stoutness. The index of his extraordinary mind was his eyes, which were lit with intelligence whenever his mental powers came into play. He is pictured in *The Universal Jewish Encyclopedia* with the sideburns so dear to the hearts of substantial Victorians. His bust, in the lobby of the Royal Courts of Justice, gives him the appearance of a Roman Senator accustomed to the exercise of authority.

In 1861, Jessel applied to Lord Chancellor Westbury for silk.

Though he was then the leading junior of the Chancery Bar, his application was refused. He was not called within the Inner Bar until 1865, the same year in which he was elected a bencher of Lincoln's Inn. By this time, he had overtaken most of the prejudice felt against him in some quarters because of his forceful personality. When his position at the bar was secure, he became more popular with his fellow barristers than he had been while making his way, but he never quite enjoyed the popularity of that remarkable man, Judah P. Benjamin, a member of the same race and the same Inn, of whom it was said that "rivalry with him seemed to create rather than disturb friendship". Jessel used to say that the four years during which he waited for silk were a blessing in disguise. He spent those years in gaining that mastery of legal principles which distinguished him when he was elevated to the bench.

John Buchan says somewhere: "The Law is a hard mistress, but she never denies a single-hearted votary". These words explain the secret of Jessel's success. The citadel of the law can only be captured at the price of unremitting toil. "The Bar is never a bed of roses", said Lord Reading. "It is either all bed and no roses, or all roses and no bed."<sup>3</sup> Jessel's bed seldom saw him until the small hours of the morning. He gave a single-hearted devotion to his mistress — the Law.

Jessel was returned to Parliament as Liberal member for Dover in 1868, but he did not make a great mark as a House of Commons man. His talents were cut to too narrow a pattern and he did not have the easy affability of a successful politician. In speech, he had more strength than art. He addressed the House as he would the Court of Appeal, stating his facts in clear, forthright language, making no concession to the expectations of his listeners, who sometimes set a higher value on the dress in which facts were presented than they did on the facts themselves.

One man, however, Jessel did impress. Gladstone was so taken with the wealth of erudition that Jessel displayed during two debates on the Bankruptcy Bill of 1868 that he marked him for preferment. Jessel's speeches on this occasion were a good index to his powerful mind. He surveyed the whole field of bankruptcy law, ranging from ancient to modern times, and illustrated his argument by reference to all former codes on the subject. Mr. Willis, Q.C., in an address on Sir George Jessel, reprinted in part in volume 75 of *The Law Times*, laments the fact that Jessel, the most illustrious graduate of London University, never took a degree in law. Jessel could scarcely have had more black-letter

<sup>3</sup> Quoted by Lord Hewart, *Not Without Prejudice* (1937) p. 35.

learning in the law if he had taken a dozen degrees. One passage from his speeches on the Bankruptcy Bill, which approaches eloquence, has been often quoted: "Only in a sense was it true that our common law was not based on the Roman law, for we had used the Roman law as the Turks used the remains of the splendid temples of antiquity. We had pulled out the stones and used them in constructing buildings which we called our own."

In 1871, when the Solicitor-Generalship fell vacant, Gladstone offered the appointment to Jessel, who accepted it. He thus became the first Jew to hold executive office under the British Crown. Shortly after his appointment as Solicitor-General, he was given a knighthood.

Gladstone, the eagle of the British political arena, who soared above prejudice, was the man to whom Jessel was under greatest obligation. A man of catholic spirit, who could be deaf to every consideration but the claims of merit, he was the man who made possible Jessel's judicial career.

While he was a law officer, Jessel's position at the bar was pre-eminent, if it may be judged by mundane standards. Edward Manson says, in the *Builders of Our Law*, "With the exception of Charles Austin when he practised before Parliamentary Committees during the great railway mania, Jessel's income at this time as Solicitor-General exceeded any on record. It was between £20,000 and £25,000." In translating this income into present day values, it should be remembered that two shillings then would do the work of a pound today.

As Sir Patrick Hastings observes in his autobiography, members of the bar fall into two distinct categories — lawyers and advocates. He elects Wilfred Greene (now Lord Greene, Master of the Rolls) and Sir Stafford Cripps as the two most perfect lawyers he has known, and Lord Carson as by far the greatest advocate. The two pursuits — the pursuit of law and the pursuit of advocacy — call for talents so diverse that they are seldom combined in one man. Lord Halsbury comes to mind as one notable exception to the general rule. Mr. Justice Birkett, the good friend of the Canadian Bar, is another. Jessel was essentially a great lawyer. He was but an indifferent advocate. Barristers, of little black-letter learning, such as Montagu Williams, Q.C., or Sergeant Ballantyne, could have made rings around him in a common law court before a jury.

In Jessel's day, the Courts of Chancery were the true home of the lawyer and their sober atmosphere was congenial to the exercise of his talents. In Chancery, there was seldom any great dis-

pute over facts. The questions for decision were questions of law. When facts were in dispute, they were generally put before the judges by way of affidavits and witnesses played a small rôle. The atmosphere in which equity lawyers laboured at the law is well illustrated by an anecdote told of an eminent Chancery practitioner. He was once requested to see a person upon whose affidavit he would have to rely in an important case. "I will have no flesh and blood in these Chambers", he replied scornfully.

Before he was made a law officer, Sir George Jessel practised his profession in the unemotional atmosphere of the Chancery courts. He was scarcely known in the Common Law courts, but, when he became Mr. Solicitor, he was soon called upon to give an account of himself in the courts of Westminster. A ship was wrecked off the coast of Cape Colony. The circumstances under which it was lost looked doubtful, but an inquiry held in the colonial court absolved the captain of all blame. Survivors of the wreck gradually trickled back to England and their version of the affair raised grave doubts over the regularity of the proceedings in the colonial court. The facts were put before Jessel, and he advised a prosecution. The magistrate concerned refused to entertain the charge. Jessel was instructed to apply to the Court of Queen's Bench for a mandamus to compel the magistrate to hear and determine the case. It was his first appearance in the Queen's Bench as Solicitor-General. Lord Chief Justice Cockburn and Justices Blackburn and Lush — three of the brightest ornaments of the bench during the reign of Victoria — were presiding.

When the Chief Justice noticed Jessel in court, he asked, in his gracious way, "Mr. Solicitor-General, do you move?"

"Yes, I do", replied Jessel, and without more ado launched into the full stream of his argument. He was reading the act of Parliament which related to the holding of a second inquiry, when Mr. Justice Blackburn interrupted: "Has not this case been tried already, and the matter determined, and is it not like the case of a prisoner who has been tried and acquitted of the offence with which he is charged?"

"Will your Lordship hear the words of the statute before you rush to hasty analogies", replied Jessel, impatiently.

"Mr. Solicitor", gently reproved the Chief Justice, "We are not accustomed to be addressed in this way."

Jessel, who had perhaps never heard of Poor Richard's homely advice that you can catch more flies with honey than you can with vinegar, hesitated for a moment, and then continued, "My Lords, when I was interrupted, I was reading the words of the

statute; I propose to read them to the end". He was finally granted his motion, but his conduct can hardly be commended. He had been allowed to fall into bad habits in the Rolls Court, where he practised regularly before Lord Romilly, who was not strong enough to oppose his imperious will.

While Sir George Jessel was Solicitor-General, Sir John Duke Coleridge (later Lord Chief Justice Coleridge) was Attorney-General. They were men of quite different stamp. A man of stately presence, wide humanitarian sympathies and broad general culture, Coleridge was a finished product of an educational system that had not been open to Jessel in his younger days. Jessel was not Coleridge's equal in the social graces but in intellectual power he overtopped him. In his interesting article on Sir George Jessel, which appeared in *Blackwood's* for January 1926, Sir Charles James Jessel has a good story of Lord Coleridge and his father. It passed current among an earlier generation of lawyers as the "never doubt" story. "Lord James of Hereford told me [says Sir Charles James Jessel] that Coleridge told him that when he was Attorney-General and my father Solicitor-General they were both called into consultation by the Cabinet with reference to the Alabama Claims. Before they went in Coleridge asked my father for his opinion on some point, an opinion which my father had no hesitation in giving, whereupon Coleridge said to him, 'Have you any doubts about it, Jessel?' 'My dear Coleridge', replied my father, according to Coleridge's version to Lord James, 'I may be wrong, and often am, but I never doubt'. Lord James afterwards met my father and asked him if the story was true, upon which my father answered, 'Very likely, but Coleridge, with his constitutional inaccuracy, has told it wrong. I can never have said "often wrong"."

Lord Romilly, Master of the Rolls, retired in 1873. Coleridge as Senior Law Officer had the right of way for the appointment, with Jessel second in line. "Coleridge once told me", says Augustine Birrell, "that when the vacancy at the Rolls happened, he teased Jessel about it, saying, 'It is a great historical office and not so very badly paid, and I am not sure that my duty to my family does not require that I should seek it for myself'. To which Mr. Solicitor replied with his customary bluntness, 'Why! Mr. Attorney, you ain't fit for it!' Nor was he! besides, he had his eye upon the Lord Chief Justiceship soon to be vacated by the death of Cockburn. . . ."<sup>4</sup>

This report of Birrell's conversation with Lord Coleridge sug-

---

<sup>4</sup> *Things Past Redress* (1937) p. 95.

gests that Jessel's grammar sometimes left something to be desired. He had one habit of speech not uncommon in some quarters in his native city: he dropped his h's. We must put his son on record as denying that his father had this failing, but there is strong evidence to the contrary. Some of his greatest admirers tell tales about this peculiarity of his. We must obey Chaucer's injunction to himself:

. . . I must rehearse  
Their tales all, be they better or worse,  
Or elles falsen some of my matter.

Mr. Willis speaks of an occasion when Jessel appeared in the Queen's Bench as Solicitor-General. The leaders of the common law bar were in the front row — Sergeant Parry among them, who had but recently been concerned in a case with Jessel and had the greatest admiration for his ability. A junior barrister leaned forward and whispered in Parry's ear, while Jessel was arguing, "He drops his h's". Sergeant Parry turned around, and giving him a withering look, said, "Good God! I would rather drop h's with Jessel than aspirate with you".

Edward Manson quotes this tale from Greville, sometime attaché to the British embassy in Paris: "I heard a story to-day worth jotting down, the hero of which is Sir George Jessel, the Solicitor-General, an indisputably excellent lawyer and a most cheery and pleasant fellow, but proverbial for being terribly innocent of his h's. Some short time since he was arguing a case of patent law rights against a French company who were sued for the infringement of an English patent relating to steam boilers and condensers. As the Solicitor-General mistrusted his French he had recourse to an interpreter in cross-examining the foreign witnesses. One of these mistaking the drift of the question put to him, Jessel said to the interpreter, 'No, no; do tell the man that he don't seize my point. My question has nothing to do with eating the pipes.' This was rendered literally by the interpreter.

"5

Jessel was told once that a whale had been stranded in Oban. "Impossible", he replied, "a whale in Olborn! It must be a 'oax."

Sir George Jessel was appointed Master of the Rolls, in succession to Lord Romilly, on August 30th, 1873. At the same time he was sworn of Her Majesty's Privy Council. He was the first Jew to be made a Privy Councillor.

His judicial office had a long history. The Master of the Rolls was originally keeper of the records and assistant to the Lord

<sup>5</sup> The Builders of Our Law (2nd ed., 1904) p. 225.

Chancellor. During the reign of Edward I, he sat as a judge in chancery. Under Cardinal Wolsey's regime, as Lord Chancellor, four courts of equity were established. On his downfall, only one of these courts was retained. This was the Rolls Court — presided over by the Master of the Rolls. Petitions were heard by the Master of the Rolls in the first instance as deputy for the Lord Chancellor.

It is interesting to recall that, in medieval times, as an old chronicler has it, "The Master of the Rolls was wont to be an eminent ecclesiastical person — to wit, either a dean, or warden, or provost of some cathedral or collegiate church — for it is an office which requireth a just and a very careful and religious man".<sup>6</sup> Not until the reign of Henry VIII was the office held by a layman.

The changing temper of the times was reflected by the fact that the first judicial office to be held by a Jew in England was the ancient office of Master of the Rolls, an office steeped in the traditions of the Christian faith.

In the year of Jessel's death, Lord Coleridge presided at the trial of Ramsay and Foote, prominent rationalists who were charged with blasphemy. Ancient authorities were cited for the Crown to the effect that Christianity was part of the law of England. In stressing the gradual extension of freedom of religion in England, Lord Coleridge made a gracious reference to Jessel:

It is no longer true in the sense in which it was true when these *dicta* were uttered, that 'Christianity is part of the law of the land'. Nonconformists and Jews were then under penal laws, and were hardly allowed civil rights. But now, so far as I know the law, a Jew might be Lord Chancellor. Certainly he might be Master of the Rolls; and the great Judge whose loss we have all had to deplore might have had to try such a case, and if the view of the law supposed be correct, he would have had to tell the jury, perhaps partly composed of Jews, that it was blasphemy to deny that Jesus Christ was the Messiah, which he himself did deny, and which Parliament had allowed him to deny, and which it was part of 'the law of the land' that he might deny.<sup>7</sup>

In passing, it is good to be able to note that Canada recently gave another indication of her coming of age by the appointment of Mr. Harry Batshaw, K.C., as puisne judge of the Superior Court for the District of Montreal. Like Jessel, Mr. Justice Batshaw is the first Jewish lawyer to be elevated to the bench of a superior court in his native land.

In 1873, when Jessel took over the historic office of Master of

<sup>6</sup> Quoted by A. K. Bruce, *Chancery Lane and Its Memories* (1949) p. 12.

<sup>7</sup> *Rex v. Ramsay and Foote* (1883), 15 Cox C.C. 231, at p. 235.

the Rolls, a long agitation for legal reform had culminated in the passing of the first Judicature Act, which became effective two years later. This act amalgamated the existing superior courts into the Supreme Court of Judicature, consisting of two divisions, the Court of Appeal and the High Court of Justice. It also provided for the fusion of law and equity, making the rules of equity supreme in case of conflict. The Master of the Rolls was made a member of the High Court of Justice by the first Judicature Act. He was also an ex-officio judge of appeal and normally sat as president of the Chancery Division of the Court of Appeal.

Jessel was strongly in favour of the changes brought about by the Judicature Acts. He served as chairman of the committee of judges appointed to frame rules and systematize procedure under them. Because of his great knowledge, which he placed unreservedly at the disposal of the committee, he is credited with much of the success that attended the re-organization of the courts.

Jessel had not been many weeks on the bench before it became apparent, to quote Edward Manson's words, "that a judge had arisen possessed of a unique genius for the work of the bench".<sup>8</sup> One of the first cases that consolidated his fame as a judge was the *Epping Forest* case.<sup>9</sup> This case lasted for twenty-two days and one hundred and fifty witnesses were examined. The tables were piled high with documents going back to the days of King John. When counsel finished their arguments, Jessel delivered oral judgment immediately, a judgment occupying sixteen pages in the law reports.

While sitting as a judge of first instance, Jessel never once reserved judgment. As a judge of appeal, he reserved twice, and then at the wish of his colleagues. He believed that dispatch was one of the chief virtues in a judge. After Mr. Justice Mathew's appointment to the bench, he called on Jessel and asked him if he could give him any pointers to assist him in his new duties. "My dear Mathew", said Jessel, "the difference between a good judge and a bad judge is not more than five per cent. The great thing is to be quick." The counsel he would have another keep, Jessel first kept himself — he was quick.

It is claimed that he was indolent and had a congenital aversion to the manual labour of writing. When the mountain of work he accomplished is surveyed, it is hard to credit him with so common a failing as indolence. There is an unpublished manu-

<sup>8</sup> *The Builders of Our Law, op. cit.*, p. 227.

<sup>9</sup> *Commissioners of Sewers v. Glasse* (1874), L.R. 19 Eq. 134.

script in the library of Lincoln's Inn entitled "Index to the Decisions, Dicta, Judgements and Observations of Sir George Jessel, Master of the Rolls, 1873-1883", by Henry Rae-Arnot, L.L.D. As Professor Goodhart points out, "Under the letter A there are references to 126 cases which were reported either in one of the various law reports or which were mentioned in the newspapers, so that some idea can be gathered of the total number of judgments he must have delivered. If the Index were published it would fill more than 500 pages."<sup>10</sup>

However he may have felt about the task of writing, Jessel never shirked the labour of giving a full decision in any case before him. He did not hold with the advice that Lord Mansfield gave to a friend about to sail to the West Indies to take up a judicial appointment: "Give your judgments, but give no reasons. As you are a man of integrity, sound sense and information, it is more than an even chance that your judgment will be right; but as you are ignorant of the law it is ten to one that your reasons will be wrong." Jessel held that an appeal judge was entitled to look into the mind of a trial judge to see it in action. "Where no reasons are given for a particular decision", he once said, "it becomes extremely difficult for a Judge [of Appeal] to follow it, because he does not know the principle on which the decision proceeded."

During his ten years on the bench Jessel had many cases that were landmarks in the law. If one of these cases had to be selected as an illustration of his judicial methods, a better choice could scarcely be made than *Sugden et al. v. Lord St. Leonards et al.* This case established the principle that the contents of a lost will may be proved by the evidence of a single witness, though interested, whose veracity and competency are unimpeached.

Lord St. Leonards made a will and eight codicils, all holograph. He died at the age of 93 years, leaving an estate of £300,000. After his death his will could not be found, but the eight codicils were. His daughter, Miss Charlotte Sugden, who had been familiar with his affairs, gave evidence of its contents. Sir James Hannen, President of the Probate, Divorce and Admiralty Division, admitted the will to probate. An appeal was taken from his decision, which was argued before a Court of Appeal consisting of Chief Justice Cockburn, Sir George Jessel M.R., Lords Justices James and Mellish and Mr. Justice Baggallay. Jessel delivered an oral judgment running to seventeen pages in the reports. Chief Justice Cockburn gave a performance no less remarkable. The

<sup>10</sup> Five Jewish Lawyers, *op. cit.*, p. 19.

judgments of these two legal giants present a good comparative study, illustrating as they do the different approaches that brilliant minds can take to the same subject.

In his essay, *Law and Literature*, Mr. Justice Cardozo classifies judicial opinions into six types. At the bottom of his list is the agglutinative, so called from the shears and the pastepot that are its implements and emblem. Jessel was never guilty of delivering a judgment of this type. The shears and the pastepot were not the tools with which he attacked the quarries of the law. The instrument he employed was the same instrument with which Sir Joshua Reynolds mixed his paints — brains.

In deciding a case, Jessel tried to get down to the bed-rock of first principles. He gave no blind allegiance to precedent. In his view, reported decisions were of value only for the principles that could be extracted from them. He seldom made reference to reported decisions. He felt bound to follow principles, but not decisions. An expression of his judicial faith is found in *In Re Hallett's Estate*:<sup>11</sup>

The only use of authorities, or decided cases, is the establishment of some principle which the Judge can follow out in deciding the case before him. There is, perhaps, nothing more important in our law than that great respect for the authority of decided cases which is shewn by our tribunals. Were it not for that our law would be in a most distressing state of uncertainty; and so strong has that been my view, that where a case has decided a principle, although I myself do not concur in it, and although it has been only the decision of a tribunal of co-ordinate jurisdiction, I have felt bound to follow it when it is of respectable age and has been used by lawyers as settling the law, leaving to the Appellate Court to say that case is wrongly decided, if the Appellate Court should so think.

In Jessel's day, as there are today, there were lawyers whose method of preparing for a case was to make a hurried hunt through the case books for a reported decision, the facts of which could be tortured into bearing a vague correspondence to the facts of the case in hand. Such lawyers were given scant consideration by Jessel. His intolerance of counsel's inefficient handling of a case became proverbial.

I propose to call a number of witnesses to speak as to Sir George Jessel's qualities as a judge. My first witness is Lord Bryce, whose evidence is to be found in his book, *Studies in Contemporary Biography*:

When the leading counsel for the plaintiff was opening his case [says Bryce], Jessel listened quietly for the first few minutes only, and then

<sup>11</sup> (1879), 13 Ch. D. 696, at p. 712.

began to address questions to the counsel, at first so as to guide his remarks in a particular direction, then so as to stop his course altogether and turn his speech into a series of answers to the Judge's interrogatories. When, by a short dialogue of this kind, Jessel had possessed himself of the vital facts, he would turn to the leading counsel for the defendant and ask him whether he admitted such and such facts alleged by the plaintiff to be true. If these facts were admitted, the Judge proceeded to indicate the view he was disposed to take of the law applicable to the facts, and, by a few more questions to the counsel on the one side or the other, as the case might be, elicited their respective legal grounds of contention. If the facts were not admitted, it of course became necessary to call the witnesses or read the affidavits, processes which the vigorous impatience of the Judge considerably shortened, for it was a dangerous thing to read to him any irrelevant or loosely drawn paragraph. But more generally his searching questions and the sort of pressure he applied so cut down the issues of fact that there was little or nothing left in controversy regarding which it was necessary to examine the evidence in detail, since the counsel felt that there was no use in putting before him a contention which they could not sustain under the fire of his criticism. Then Jessel proceeded to deliver his opinion and dispose of the case. The affair was from beginning to end far less an argument and counter-argument by counsel than an investigation directly conducted by the Judge himself, in which the principal function of the counsel was to answer the Judge's questions concisely and exactly, so that the latter might as soon as possible get to the bottom of the matter. The Bar in a little while came to learn and adapt themselves to his ways, and few complained of being stopped or interrupted by him, because his interruptions, unlike those of some judges, were neither inopportune nor superfluous.<sup>12</sup>

This does not present a wholly admirable picture. The judge who seeks to clip the wings of fancy, when a barrister is launching himself into flight, is at best a nuisance, and at worst a menace. The judge who wants to run the whole show, who forgets that the barrister plays as integral a part in the administration of English justice as he does himself, is not an unmixed blessing.

It must not be thought that Jessel always had everything his own way in his court. Atlay in his sketch of Lord Chancellor Herschell, in *Lives of the Victorian Chancellors*, tells of an occasion when Greek met Greek. "When he [Herschell] was at the Bar", says Atlay, "Sir George Jessel once attempted to cut him short in an argument. Herschell, who was not a man to be set down, retorted on the Master of the Rolls, that, important as it was that people should get justice, it was even more important that they should be made to feel and see that they were getting it." The honours on that occasion certainly went to Farrer Herschell, who later became the first Jew to hold a higher judicial office than

---

<sup>12</sup> (1903) p. 173.

Jessel. He was appointed Lord Chancellor, in Gladstone's administration of 1836, at the age of forty-nine.

Sergeant Robinson, in his book of reminiscences, *Bench and Bar*, tells of an occasion on which Jessel met his match, when he followed his usual habit of trying to speed proceedings:

I remember another case of a barrister [says Robinson], then recently called, appearing before the Court of Appeal, over which the Master of the Rolls, the late Sir George Jessel, presided. The novitiate had evidently prepared a most elaborate statement of his case, and seemed determined that it should be heard throughout. He poured forth argument after argument into the unwilling ears of the judges, who tried in vain to put an end to him. If ever there was a judge who could put down a persistent and implacable advocate, and make him think less of himself than was habitual to him, it was Sir George Jessel; but in this instance he was over-matched. The enemy had always some fresh point to open out, and of course it must be listened to before it could be refuted. At length he mentioned one, which Sir George Jessel said he would at once refuse to hear discussed — it ought to have been taken in the court below.

'But, my lord, I did take it in the court below, and the judge stopped me.'

The chief revived. He looked forward over his desk and said earnestly to his persecutor,

'Do you mean really to say, sir, that he stopped you?'

'Yes, my lord; he really stopped me.'

'Did he?' said the chief; 'You would much oblige me by telling me how he did it; the process may be useful to me in future'.<sup>13</sup>

The harsh lights of Lord Bryce's picture are softened somewhat by the evidence of my next witness, Augustine Birrell, who says in his essay on Dr. Johnson, in *Obiter Dicta*: "The poorer the poet, the kindlier is the treatment he receives. Johnson kept all his rough words for Shakespeare, Milton and Gray. In this trait, surely an admirable one, he was much resembled by that eminent man, the late Sir George Jessel, whose civility to a barrister was always in inverse ratio to the barrister's practice; and whose friendly zeal in helping young nervous practitioners over the stiles of legal difficulties was only excelled by the fiery enthusiasm with which he thrust back the Attorney and Solicitor-General and people of that sort." Surely this is as it should be. No one will be heard to complain if a judge expects a leader to measure up to a stern standard, and extends a helping hand to the young and inexperienced barrister.

Continuing with the evidence of Augustine Birrell, I go to his autobiography, *Things Past Redress*, where he says:

With young and timid Juniors, Jessel, despite his rough tongue, was very popular. He was always very kind to me. On one occasion when I had

<sup>13</sup> (1891) p. 83.

launched a case against a money-lender and had inserted in the Statement of Claim a rhetorical paragraph describing the nature of a money-lender's business, the defendant had the impertinence to take out a summons in Chambers to strike the paragraph out. The summons was heard (if that is the right word) by the M.R., and struck out it was. It was the last case on the list, and the victorious money-lender and his solicitor had departed in triumph, and I was left alone tying up my Brief, when Jessel said to me, 'You are a young man and must remember you have to practise under new rules. That stuff I have just struck out would have passed muster well enough in Vice-Chancellor Shadwell's time, but now it is out of date, and you must learn a new style of pleading.' I thanked him and departed. As he had made the costs of the summons costs in the Cause and eventually I got the decree I wanted with costs, the money-lender had to pay for my humiliation. After a while Jessel used to sit in the Court of Appeal with two other judges, but wherever he sat, his was the dominant mind and matter.

I am now told by the Olympians who for the hour sit in the House of Lords as a Final Court of Appeal, that Jessel's judgments are not to-day of high authority — those of Lord Lindley being much preferred. This may be so, indeed it must be so, for the House of Lords (though even the House of Lords occasionally goes wrong) are best able to judge the waxing and waning of judicial reputations. None the less, at the dates I am dealing with, Jessel was the Lord Paramount in Lincoln's Inn, and the great god of the Junior Bar. During his sway the Rolls Court was a true School of Law, and was crowded not only with practising barristers but with eager students. There has been nothing like it since.<sup>14</sup>

My third witness is a man of many parts, whose evidence must be given great weight. I call to the stand the Earl of Oxford and Asquith, K.C., quoting from his book, *Memories and Reflections*:

By way of recreation—for Equity was not in my regular line [says Asquith] I used now and again to spend a morning in the Rolls Court in Chancery Lane, which was unique both in its output and its methods. Sir George Jessel, who sat there, was, in rapidity of apprehension and readiness of judgment, one of the greatest judges of First Instance of our own or perhaps any time. In those days the solicitor for the plaintiff could choose among the Chancery judges the one whom he wished to try his case. Jessel's list, notwithstanding his lightning-like facility in disposing of it, was always crowded. It used to be said that every solicitor who was tolerably certain that he had a good case chose the Rolls Court as a matter of course; while those who had a suspicion, or more than a suspicion, that their case was a bad one, resorted to one or another of the Vice Chancellors: to one of them in particular, with the result that his list was easily second in bulk to Jessel's.

Jessel had not only an almost uncanny quickness and sureness in threading his way through a jungle of the most complicated facts, but a memory for Case law so accurate and so retentive that he hardly needed to consult an authority. I once saw him at the end of an intricate litigation dealing with mercantile commissions in the Manchester trade, in which all the most eminent leaders of the Equity and Common Law Bars were

<sup>14</sup> (1937) p. 96.

engaged, and the hearing of which even he was unable to compress into less than four or five days, rise at the usual time for lunch, come back in half an hour, and deliver judgment off the reel, without even looking at a note. He was not perhaps so distinguished as a master of the broad principles of jurisprudence, and though his decisions were very rarely reversed, I doubt whether in these days they are often cited as illustrations, and still less as developments, of the rules of Equity.<sup>15</sup>

My fourth witness is a man who never knew Jessel in the flesh — but great mind spoke to great mind across the years. In a letter to William H. Dunbar, a young lawyer who was later his partner, Louis D. Brandeis offered this advice:

Knowledge of the decided cases and of the rules of logic cannot alone make a great lawyer. He must know, must feel 'in his bones', the facts to which they apply — must know, too, that if they do not stand the test of such application, the logical result will somehow or other be avoided. You are sometimes inclined to the attitude of 'then so much the worse for facts'.

If you will recall Jessel's opinions you will see what I mean. Knowledge of decisions and powers of logic are mere hand maidens — they are servants, not masters. The controlling force is the deep knowledge of human necessities. It was this which made Jessel the great lawyer and the great or greater judge. The man who does not know intimately human affairs is apt to make of the law a bed of Procrustes.<sup>16</sup>

As my fifth and final witness, I call Lord Shaw of Dunfermline. In a letter to his daughter, Lord Shaw reports a conversation he had, as a young man, with the Grand Old Man of British politics. He asked Gladstone if, in his opinion, Lord Chancellor Cairns stood at the head of the great lawyers of England. "Yes", replied Gladstone, "I have heard great lawyers in England discuss that topic, and I found the general opinion to be that among them Sir Hugh Cairns stands first, and Jessel — Jessel the Jew, stands second."<sup>17</sup>

That concludes our evidence. The only point to be determined is where to place Jessel in the temple of legal fame. If we accept his own opinion and place him among the three greatest equity judges of all time, we shall not be far wide of the mark.

Equity, like higher mathematics, or an obscure science, can be an interesting intellectual pursuit, if your mind runs that way. To most minds, however, it is pretty dull stuff. One handicap under which equity laboured was the restricted scope it allowed to the development of personality. The great personalities of the law, with few exceptions, Jessel among them, belong to the common law side.

If we placed Jessel as the greatest equity judge of them all, he

<sup>15</sup> (1927) p. 84.

<sup>16</sup> Alpheus Thomas Mason, Brandeis: A Free Man's Life (1946) p. 80.

<sup>17</sup> Letters to Isabel (1921) p. 89.

would still not rank as the greatest English judge. Lord Mansfield—to name but one judge from the common law side—towers above him. Jessel never reached the heights that Mansfield reached in the case of James Sommersett, a negro slave. Torn by force from his African home, sold into bondage in Virginia and taken to England by his master, Sommersett lay in irons on board a ship riding at anchor in the Thames, waiting to be transported to Jamaica, when his case came before Lord Mansfield on the return of a writ of habeas corpus.

Striking a note that still resounds down the corridors of time, Lord Mansfield said: "The air of England has long been too pure for a slave, and every man is free who breathes it. Every man who comes into England is entitled to the protection of English law, whatever oppression he may heretofore have suffered, and whatever may be the colour of his skin. Let the negro be discharged." Magnificent words these, spoken in an English court, in 1771, by the man who best personifies the dignity, integrity and majesty of English justice. A Chancery judge working with the heavy materials of equity—trusts and wills and frauds—could not be expected to utter words like these. Prose does well enough in the courts of equity; if it is poetry you seek, you must seek it in the courts of common law.

Sir George Jessel, as Master of the Rolls for ten years, never had the stage upon which to play the judicial part that Lord Mansfield had as Lord Chief Justice of England for thirty-two years. Chance never favoured him with the opportunity of appearing to such advantage as Lord Mansfield did in a memorable scene in the Court of King's Bench on June 8th, 1768. In reversing the outlawry of John Wilkes, Lord Mansfield, addressing himself to a mob that had threatened him with personal violence, spoke with the voice, and in the words, of Sovereign Justice herself: "I will not do that which my conscience tells me is wrong upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels—all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. . . . No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form which any other defendant could claim under a like objection."

Great as he was, Sir George Jessel was not the greatest Jewish

judge. That distinction, it seems to me, must be accorded to Mr. Justice Cardozo. Cardozo was the Shakespeare and Jessel the Milton of the judges of their race. Jessel took to the law great talents — genius, if you will. Cardozo took to the law the fire of an original passion. Jessel harkened to the loud insistent voice of the past. Cardozo heard the faint infant cry of the future. "A Judge has nothing to do but to administer the law as he finds it", said Jessel.<sup>18</sup> Cardozo recognized the creative function of the judicial process. Jessel was a true child of Victorian England, when doubt was synonymous with wrong, and uncertainty with weakness. Cardozo transcended the times of doubt and uncertainty in which he lived. He was of his own times but also of all time.

Two lines from Cowper's *Task* suggest themselves to the mind in making a comparison between Jessel and Cardozo:

Knowledge is proud that he has learned so much;  
Wisdom is humble that he knows no more.

I see Jessel as the personification of Knowledge, and Cardozo as Wisdom's true self.

Jessel was a practical man of the world. Cardozo was a prophet in direct descent from the prophets of old. Cardozo, the prophet, is more typical of the genius of his race than Jessel, the man of affairs — for during the long nights of their history of 3,000 years, the triumph of the Jews has been a triumph of the spirit. Their victories have been victories not of bullet and bomb and bloodshed; they have been victories of the mind and heart; their men of giant stature have not captured and laid waste the earth, they have conquered and extended the kingdom of the mind. They have had no Caesar, no Napoleon, no Hitler. They have had a Spinoza, a Heine, an Einstein.

Jessel sat as a judge of first instance from 1873 until 1881. In that year Lord Justice James died. He had been the strong judge on the Court of Appeal. With him gone, it was felt that there was no judge left of sufficient weight to hear appeals from Sir George Jessel — not that many appeals were taken from him, or that many of those taken were allowed. Much against his will, by the second Judicature Act, the Master of the Rolls ceased to be a judge of first instance and became permanently a judge of appeal.

He continued to rank third in the judicial hierarchy — after the Lord Chancellor and the Lord Chief Justice. In actual fact, he was the second ranking permanent judge, for the Lord Chancellor depended upon the exigencies of politics for his position. In the historic pageant of judges, which preceded the opening of the Royal

<sup>18</sup> *Bunting v. Sargent* (1879), 13 Ch. D. 330, at p. 335.

Courts of Justice by Queen Victoria on December 4th, 1882, Jessel was third in order of precedence, after Lord Chancellor Selbourne and Lord Chief Justice Coleridge.

During the composition of the address to be delivered by the judges to Queen Victoria on this same occasion, Jessel displayed one of his rare flashes of wit, by suggesting that the phrase, "Conscious as we are of our own shortcomings", should be redrafted, "Conscious as we are of each other's shortcomings".

Early in 1883, diabetes, the disease against which doctors had no defence until Canada's son, Sir Frederick Banting, made his great discovery, manifested itself in Sir George Jessel. Courageously he faced the inevitable, continuing his work on the bench until the end. He sat in court for the last time on March 16th, 1883. Richard Burdon Haldane (later Lord Chancellor Haldane) appeared for the appellants in this last case of Jessel's. He was then on the threshold of his great career in the law, and had been deserted by Horace Davey (later Lord Davey), who was to lead him but who shirked the task because he thought there was no merit in the appeal.

Lord Haldane pays tribute to Jessel in his autobiography:

Jessel, when he had caught the point, began to play with me as a cat does with a mouse. But I had the authorities even more at my fingers' ends than he had, the consequence of portentous study. He could not break me down, for I would not yield an inch. He began to get excited and to throw the power of his personality into the struggle with me, while his colleagues remained silent. Four o'clock came and he looked very ill. He was suffering from Bright's disease[?], but such was his courage that he had gone on with his work. Next day the Court was empty for the Master of the Rolls was, as we were informed, ill. Next day we were told that he was dead. The appeal was adjourned, and we were informed that it must be opened afresh on a subsequent date. My brother barristers affected to reproach me for having killed Jessel. If I had, it was indeed unwillingly, for I had the highest admiration and deepest regard for that great judge.<sup>19</sup>

From his call to the bar by the Honourable Society of Lincoln's Inn on May 4th, 1847, until his death on March 21st, 1883, Jessel lived a life of devotion to the law. As a busy lawyer, and later as a busy judge, he yet managed to give a margin of his time to interests outside his profession. He was active in the affairs of University College, London. From 1881, until his death, he served as Vice-Chancellor of London University. He was a fellow of the Royal Society. He was the author of the report of a Royal Commission upon which was based the Medical Act of 1886.

<sup>19</sup> An Autobiography (1929) p. 40.

He was a good Hebrew scholar and proud of his heritage of race. In responding to a toast to Her Majesty's judges, he once said, "There is nothing I look on with more gratification, pride, and thankfulness than the fact that my humble efforts have not only been of service to myself and the community to which I belong, but also to those to whom I am bound by the common ties of brotherhood and religion".<sup>20</sup> He was gratified that his success shed a lustre on his race, but he never set his face to the task of righting the wrongs that oppressed the Jews.

If I forget thee, O Jerusalem, let my right hand forget her cunning.

If I do not remember thee, let my tongue cleave to the roof of my mouth; if I prefer not Jerusalem above my chief joy.

That cry from the heart of the Psalmist found no echo in Jessel's heart as he went about his busy life in the law. He was never a crusader in the cause of Judaism. He made no contribution to the solution of that large problem — the emancipation of the Jews, not only as individuals but as a people.

Jessel is interred in the cemetery of the United Synagogue at Willesden. His memorial service was preached by the Rev. Dr. Hermann Alder, Delegate Chief Rabbi, in Central Synagogue, London, on March 24th, 1883. Rabbi Alder took his text, appropriately, from Deuteronomy I, 16 and 17:

And I charged your judges at the time, saying, Hear the causes, between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; and the cause that is too hard for you, bring it unto me and I will hear it.

"Seven qualities", said the Rabbi, in his eloquent memorial tribute, "were regarded by the sages as indispensable requisites of a judge — wisdom, modesty, fear of God, hatred of gain, love of truth, the love of one's fellow creatures, and an unstained reputation". It would be hyperbole to say that Sir George Jessel possessed all these seven qualities in superlative degree, but they were so admirably mixed in him that one might stand up and say to all the world: "This was a judge!"

<sup>20</sup> (1883), 74 *Law Times* 390.