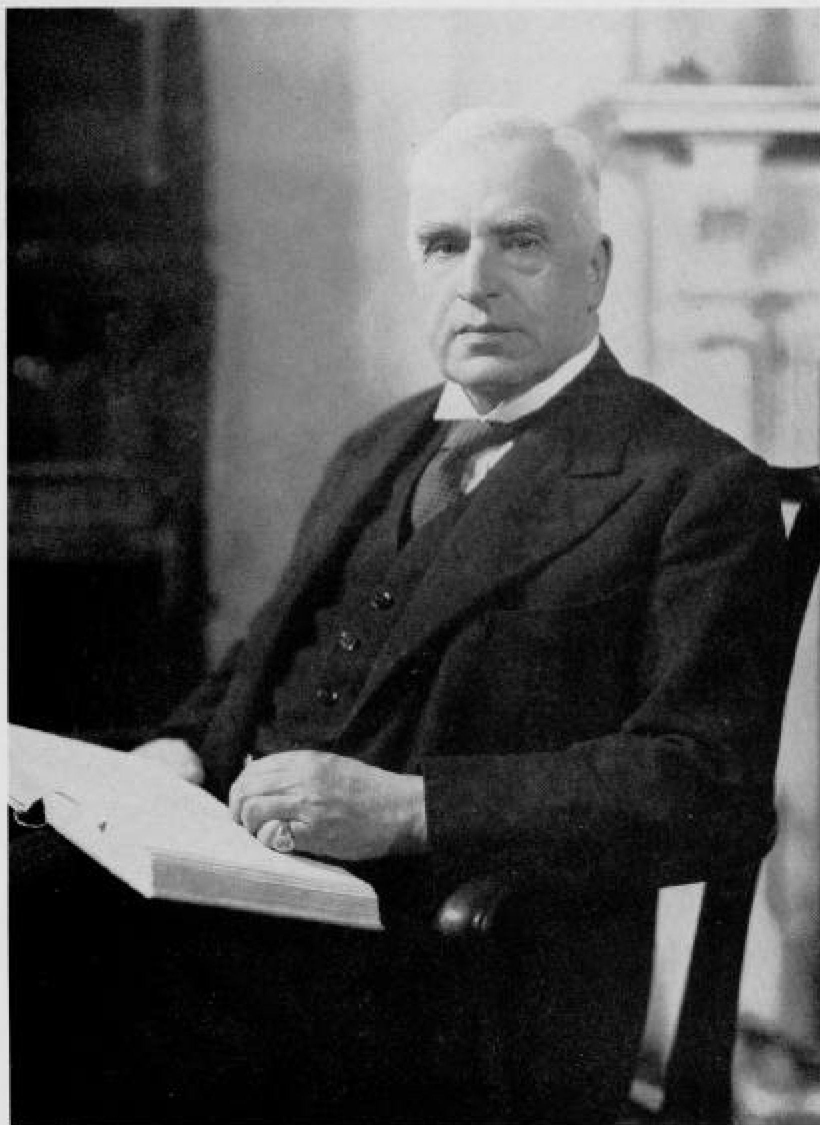
PLATE XCIII



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LORD WRIGHT, G.C.M.G.

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LORD WRIGHT

1869–1964

ROBERT ALDERSON WRIGHT, later Lord Wright of Durley, was always more interested in other people and in the things that they did than he was in himself or in his own remarkable career. As a result, there are few records of his early life; in *Who's Who*, the only references before he took his B.A. degree at Cambridge in 1896 are 'b. 15 Oct. 1869; s. of John Wright, South Shields; Educ. privately; Trinity College, Cambridge'. His father had been Marine Superintendent of South Shields, so that it was from him that his son obtained his first knowledge of ships which was to prove so useful to him later in his legal career. Strange to say, he never seemed to take any interest in sailing, although he was interested in other forms of sport. He once remarked that he had not been strong as a child and that he spent most of his time reading at home; this probably explains his passion for books and his belief in the importance of exercise. Although he never played any games, he was, as a young man, a keen mountaineer and a member of the Alpine Club. Later in life he became an enthusiastic horseman and continued to ride until he was over ninety. He was particularly proud of the fact that his wife, whom he had married in 1928, Margery Avis, daughter of F. J. Bullows of Sutton Coldfield, was one of the most expert horsewomen in England.

Wright matriculated at Trinity College, Cambridge, in 1893, at the age of twenty-four, which is considerably older than is true of the normal undergraduate. He read Classics and was placed in the First Division of the First Class Part I of the Classical Tripos in 1895. He was placed in the First Class (undivided) of Part II of the Classical Tripos in 1896; the section which he took was that on philosophy, which stood him in such good stead later in life. He was elected to a Prize Fellowship in 1899 on a dissertation concerning a philosophical subject: according to the recollection of an old friend it was concerned with the philosophy of Lotze.

A Fellowship at Trinity in those days entitled the winner to a stipend of about £200 a year for six years without any obligations. This income, supplemented by part-time law teaching, enabled him to go to the Bar and maintain himself

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while waiting for work. He was called to the Bar by the Inner Temple in 1900 when he was thirty-two. This is an illustration of the interesting fact that those who are called at what might be described as a mature age often prove unusually successful, as did, for example, Viscount Hailsham and Sir Patrick Hastings.

Wright was a pupil in the chambers of Mr. (afterwards Lord Justice) Scrutton, who was also a Trinity man. At that time he shared the leadership of the Commercial Bar with John Andrew Hamilton, later Viscount Sumner. The Commercial Court had been founded in 1895 when it became clear that difficult problems arising in the business world were not being adequately dealt with by some of the common law judges. Moreover, a common law jury might not be able to understand the commercial problems. Scrutton had a remarkable 'stable' of pupils; in addition to Wright, they included Lord Atkin and Lord Justice Mackinnon. Work was very slow in coming to Wright, and at one time he very nearly abandoned practice for full-time law teaching. When work came, it came with a rush; he informed a friend that his fees rose from £300 in one year to £3,000 in the next.

When the First World War began in 1914 there was, as was natural, a decline in the ordinary business of the courts, but the Prize Court, as was inevitable, made up for this. The problems of Prize Law were of the greatest importance at that time because the strict enforcement of the blockade against Germany and her partners was an essential part of the war strategy by which the Allies hoped to win the war. It is of interest to note that in the Second World War there was only a single important prize case. The Commercial Court also had to deal with the various novel problems concerning impossibility of performance under the law of contract. Of equal interest were a number of cases concerning the nature of causation, e.g. whether the destruction of a ship had been caused by a war risk. It was in these that Wright was pre-eminent, for his training as a classical scholar and his interest in philosophy enabled him to deal with these difficult philosophical questions with unusual clarity and thoroughness. It was particularly in the House of Lords and in the Judicial Committee of the Privy Council that he shone. Perhaps 'shone' is not the right word, because as *The Times* said in its obituary notice (29 June 1964): 'Though he had an attractive vein of dry humour, his advocacy like that of several of his contemporaries in commercial practice was lugubrious rather than brisk.' Thus, it is said that after addressing the

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House of Lords for several days in a case arising out of the destruction of Smyrna in 1922, he concluded in a hesitant manner by saying: 'and then there is a claim in regard to a piano, but I will not go into that.' In 1917 Wright took silk and soon became the undisputed leader of the Commercial Bar.

In 1925 he was nominated by Lord Cave L.C. to be a judge of the High Court of Justice, King's Bench Division, in succession to Mr. Justice Lush who had resigned. At the Bar Wright's strength had lain in his capacity to marshal his facts in a clear and orderly manner, and to concentrate on those which were essential to the establishment of his case. This gave him particular strength when he became a trial judge. Although he had had virtually no experience in the criminal courts, he proved to be an outstanding criminal judge. His most famous criminal case was the trial of Lord Kylsant in 1931. Kylsant, who had been the Chairman of the Royal Mail Steam Packet Company, signed a prospectus relating to the issue of certain securities. It stated that 'during the past ten years the average annual balance available has been sufficient to pay the interest on the present issue more than five times over'. This statement was literally true, but Kylsant knew that other facts, which entirely altered the picture, were being deliberately suppressed. In his charge to the jury, Mr. Justice Wright emphasized that sometimes half a truth is no better than a downright falsehood. When Kylsant was convicted, he appealed to the Court of Criminal Appeal, but it affirmed his conviction, quoting at length from the judge's summing up to the jury (*Rex* v. *Lord Kylsant*, [1932] 1 K.B. 442).

Perhaps the most difficult case that came before Wright as a judge of first instance was the famous *Banco de Portugal* v. *Waterlow & Sons Ltd.*, which proved to be as interesting and difficult for the economists as it was for the lawyers. The defendants, who were the well-known printers of bank-notes, were employed by the plaintiff bank to print a new issue of their notes. Thereafter the defendants delivered more than £500,000 of these notes to a group of conspirators who were able to put them into circulation in Portugal. There was little question that the printers had been guilty of negligence in acting without due care on the fraudulent instructions of the conspirators, but the great difficulty of the case lay in determining the measure of the damages that the bank had suffered. On the one hand, it was argued that as there was no limit on the number of notes that the bank could issue, it followed that it had

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suffered nothing more than nominal damages by the issue of these notes. On the other hand, it was claimed for the bank that it was entitled to recover the full face value of the notes, which amounted to £569,421. Mr. Justice Wright gave judgement for the plaintiffs. This was reversed in the Court of Appeal, but was restored by the House of Lords, [1932] A.C. 452, by a majority of three to two.

The third outstanding case which Wright J. tried was *Bell* v. *Lever Brothers Ltd.* When Bell retired from the chairmanship of the Niger Company, which was controlled by Lever Brothers, they agreed to pay him £30,000 as compensation for the loss of his office. Thereafter they discovered that he had entered into secret speculations in cocoa which would have entitled them to dismiss him from office without any payment being made. Wright J. held that the contract had been void, as it was based on a mutual mistake of fact concerning a fundamental assumption on which the agreement had been made by the parties, and ordered that the moneys paid thereunder should be repaid by Bell. His judgement was affirmed in the Court of Appeal, but was later reversed in the House of Lords, [1932] A.C. 161, by three to two. He remained unrepentant concerning that case, and many academic writers, both here and in the United States, have agreed with him. To allow a person to retain £30,000 in these circumstances seems to show an inelastic application of the concept of mistake.

In 1932 Wright was created a Lord of Appeal in Ordinary, by-passing the Court of Appeal. Some people thought that Lord Justice Scrutton ought to have been promoted, but his age prevented this, he being at that time seventy-six.

Wright then began a career of fifteen years in the appellate courts which must have been one of the most successful in the whole of English legal history. It has always been the boast of the common law that it is founded on practical reason and sound commonsense. It was these characteristics which particularly distinguished the work of Lord Wright. He fought against subtle distinctions, unnecessary fictions, and historical survivals which are a hindrance to the proper development of the law. In the interpretation of statutes, of wills, and of contracts he always sought to avoid reaching a result which was inconvenient or apparently irrational. It might be said that he was the personification of the reasonable man. He was particularly interested in the law relating to damages which has suffered more than any other branch of the law from over-subtlety and

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misleading metaphors. He gave it a new start by his practical interpretation. Typical of his approach was his statement, in *Liesbosch Dredger* v. *S.S. Edison*, [1933] A.C. 449, 460, that 'in the varied web of affairs, the law must abstract some consequences as relevant, not perhaps on grounds of pure logic, but simply for practical reasons'.

In 1935 Lord Hanworth resigned as Master of the Rolls, i.e. President of the Court of Appeal. It was difficult at that time for the Government to find a suitable successor, so that Wright was persuaded to accept the office on the condition that he would return to the House of Lords as soon as possible. He found the work onerous, but the two years during which he presided in the Court of Appeal were particularly valuable. A quotation from his judgement in *Berg* v. *Sadler & Moore*, [1937] 2 K.B. 158, 162, may be of interest as an illustration of his style. The point at issue in the case involved the maxim *Ex turpi causa non oritur actio*. Concerning this he said: 'This, though veiled in the dignity of learned language, is a statement of a principle of great importance; but like most maxims it is much too vague and much too general to admit of application without a careful consideration of the circumstances and of the various definite rules which have been laid down by the authorities.'

In 1937 Lord Wright returned to the House of Lords, when Sir Wilfrid Greene succeeded him as Master of the Rolls. His enthusiasm for the law remained unabated and many of his judgements have become leading authorities. Perhaps the most interesting was in *Bourhill* v. *Young*, [1943] A.C. 92, the famous 'shock' case in which he rejected what has been called the area of physical danger test, viz. a person who suffers from a mental shock can only recover damages if at the time of the shock he was so close to the scene of the accident that he was in physical danger. Here again, Lord Wright applied a rule of commonsense when he suggested that the practical question was whether the defendants should have foreseen that the plaintiff might have received a shock by becoming aware of such an accident, and that they should have guarded against it.

It is impossible to deal here in any detail with the many outstanding judgements that he delivered. As was natural, his pronouncements on commercial and shipping law were of peculiar importance. Reference may perhaps be made to *Lazard Brothers & Co. Ltd.* v. *Midland Bank Ltd.*, [1933] A.C. 289, in which the consequences which followed on the dissolution of the Moscow Bank were in issue, and *Bank of Baroda* v. *Punjab*

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National Bank, [1944] A.C. 176, in which he discussed the certification of a cheque. But it is true to say that there was hardly a single branch of the law in which he was not an expert and to which he did not make a valuable contribution.

Some critics suggested that his judgements tended to be more like chapters from a textbook than a decision in a particular case, because he placed so much emphasis on the history of the law and on some of its vagaries. It was, however, usually the busy practitioner who advanced this criticism rather than those who were concerned with law as a science. Wright realized that as a member of the House of Lords and of the Judicial Committee of the Privy Council it was his duty to see that the decisions of these courts should not only reach a proper conclusion, but should also establish as far as possible general principles that could be followed in future cases. It was for this reason that his judgements were regarded with such great respect by the courts both in the United States and in the Dominions, and were cited on a great number of instances in their own decisions.

Lord Wright's other contributions to the development of the law rank second only to his judgements. Collected in part in his *Legal Essays and Addresses* (1939) or published in the *Law Quarterly Review*, he played a notable role as an expounder and critic of the law. For instance he attempted to place the law of quasi-contract, which is part of what is known in the United States, and is beginning to be known in England, as the law of restitution, on the basis of the duty to restore an unjust enrichment, instead of on the fiction of an implied contract. In this field he proved in large part to be successful, although the House of Lords has resolutely insisted on following its own precedent established in *Sinclair* v. *Brougham*, [1914] A.C. 398. It is also probable that his criticism of the self-imposed rule that the House of Lords is absolutely bound by its own judgements will bear fruit in the near future. In no other countries do the highest courts place themselves in such a strait-jacket.

Wright never forgot that he had been a part-time law teacher for a number of years, with the result that there has probably been no other English judge who has done so much to encourage the study of law from the scholarly standpoint as he did. His address entitled *The Study of Law* (1938), 54 L.Q.R. 185–200, explained the absence in this country of a systematic and scientific study of law which Sir Frederick Pollock, whom he greatly admired, had deplored. Remembering his classical upbringing, he said: 'What need then, it may be asked, is there for the

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scientific and systematic study of law? Is it still not enough to proceed from case to case, like the ancient Mediterranean mariners, hugging the coast from point to point and avoiding the dangers of the open sea of system and science? Why contaminate unenlightened commonsense or rule of thumb by principle or system?' He answered these questions with a firm negative. He pointed out that in one sense the systematic study of English law was impossible because, although its growth had been determined in part by logic, it had also in part been based on convenience, on artificial or procedural requirements, and in part on power, accident, and on the survival of primitive habits of mind. He held that this multitude of occasionally conflicting sources made it all the more necessary to apply the scientific method so that anomalies could be eliminated when they had been unmasked. He then gave a number of illustrations of legal rules that were out of date. Some of these have been eliminated since then by what he termed strong and liberal-minded judges who succeeded in distinguishing the present cases from those that had been decided in the past. Some of the anomalies have been eliminated by statutory reform.

Legislative law reform owes more to Wright than has ever been fully recognized. When Lord Sankey, the Lord Chancellor, appointed the Law Revision Committee in 1934 Lord Hanworth was its first chairman, but after a few months Lord Wright succeeded him. It was in large part due to his enthusiasm and energy that the Committee issued eight Reports in the next five years, seven of which have been enacted by Parliament with only slight alterations. Only one of the Reports encountered strong opposition which side-tracked it until its provisions could be further debated. This was the Sixth Report, published in 1937, which recommended the abolition of the Statute of Frauds, except in regard to real property, and various alterations in the law relating to the necessity for consideration in contracts. Some of these recommendations, especially the one concerning the Statute of Frauds, have been given statutory effect in recent years, but a number of the technical rules concerning consideration still remain, so as to cause occasional injustice. It is of interest that the new Law Commission, created in 1965, has announced in its first Report that it will devote further study to these matters.

It was Wright's experience in the Prize Court during the First World War which, he said, first made him aware of the ruthless manner in which the Germans treated their

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enemies. He was, therefore, willing, in spite of his many legal commitments, to become in 1944 the Australian Representative on the United Nations War Crimes Commission, and to accept the chairmanship in 1945. The importance of the work done by this Commission has not been generally realized. It collected most of the material on which the charges thereafter presented at the trials at Nuremberg were based, and that Tribunal subsequently acknowledged how greatly its work had been facilitated by the care with which the Commission had performed its duties. In spite of his age Lord Wright visited some of the worst of the prison camps in Germany as soon as the fighting had stopped. For these services he was awarded a G.C.M.G. in 1948.

Arising out of his work as Chairman of the War Crimes Commission, Lord Wright wrote an article entitled *War Crimes Under International Law* (1946, 62 L.Q.R. 40) which was one of the most important contributions ever made to that difficult subject. It explained the grounds on which the Governments of the United Kingdom, the United States, the French Republic, and the Union of Soviet Socialist Republics established a Tribunal for the trial and punishment of the major war criminals of the European Axis countries. The jurisdiction of the Tribunal covered the following crimes: (*a*) crimes against peace, i.e. planning and waging a war of aggression; (*b*) war crimes, i.e. violations of the laws and customs of war; (*c*) crimes against humanity, in particular murder, enslavement, and torture. In the establishment of this Tribunal and in determining its jurisdiction, Lord Wright and Justice Robert M. Jackson of the United States Supreme Court played a major part.

In the introduction to his article Wright points out that the nature, the sources, and the sanctions of International Law differ radically from those of Municipal Law because the former has no legislature or established Court. Thus 'International Law represents the imperfect endeavour to develop a body of rules and principles which will go towards establishing a rule of law among the nations. . . . There may be such rules without legislation, without Courts and without executives to give effect to them.' To speak of *ex post facto* rules in this connexion is meaningless for the rules are based on the recognition that they are part of 'the instinctive sense of right and wrong possessed by all decent men—and all civilized nations'. It is only in this way that International Law can develop.

Similarly as there was no established Court it was necessary to create an appropriate Tribunal similar to the Military

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Commission which had been established in the United States to try the German prisoners who had been charged with landing in the United States for the purpose of spying and sabotage (cf. *Saboteurs, Ex p., Quirin* (1942) 317 U.S. 1). Such a Court must be fair, and it must conduct the trial on principles of elementary justice, but it need not be neutral. Otherwise it would never be possible to try an enemy spy.

In regard to the jurisdiction of the Tribunal, Wright pointed out that war crimes and crimes against humanity had long been recognized as crimes by International Law. In convicting the prisoners at Nuremberg under these charges no novel law was being created so that it could not be argued that their convictions were based on *ex post facto* law. In regard to the crimes against peace it had become generally accepted in recent years that a war of aggression was the worst crime that could be committed for 'it is the accumulated evil of the whole'.

Having dealt with these major points, Lord Wright then replied to the arguments based on the defence of superior orders, and the defence of the immunity of heads of state.

At the present time the future of International Law seems to be uncertain, but sooner or later it will be necessary for the nations of the world to be governed by decent rules of conduct if they are to survive. When that time comes the importance of Lord Wright's contribution to International Law will be recognized.

Wright received many honours. In 1940 he was elected a Fellow of the British Academy. He was also elected an honorary Fellow of Trinity College, Cambridge, and he held the office of Deputy High Steward of Cambridge University.

A. L. GOODHART

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