



*Photograph by Lafayette*

SIR PERCY HENRY WINFIELD, 1927

## PERCY HENRY WINFIELD

1878-1953

**P**ERCY HENRY WINFIELD, Kt., Q.C., LL.D., died at his home in Cambridge on 7 July 1953. Born on 16 September 1878 at Stoke Ferry in the County of Norfolk, he was the youngest son of F. C. Winfield, merchant of that town. In 1890, being then twelve years of age, he was admitted as a boarder to the ancient Grammar School at King's Lynn; and when, six years later, he left school for Cambridge, he had obtained a London Matriculation certificate (1st Division), was senior scholar of his county, and had won the school's Gold Medal given and presented by the then Prince of Wales. This medal, presented nowadays by Her Majesty the Queen, was awarded each year on the written reports of an external examiner. After twice being a runner-up, Winfield won it in 1895 with a good all-round performance topped by some outstanding papers in English, Mathematics, and Classics. He retained a lively interest in the school until his death.

In October 1896 he was admitted to St. John's College, Cambridge, as a pensioner. At the end of his first year he took a First Class in the college examinations in Law and was elected an Exhibitioner and Proper Sizar of the college. In his second year he was senior in the first class in Part I of the Law Tripos and was elected a Foundation Scholar; and in the following year, in Part II of that Tripos, he was again at the head of the first class and his scholarship was renewed. In 1900 the college elected him to a MacMahon Law Studentship, founded for enabling students to qualify for the legal profession, and he was awarded the second Whewell Scholarship in International Law. He went out of residence in 1902 and, in June 1903, was called to the Bar by the Inner Temple. Then followed a year or two of practice on the South-Eastern Circuit. But he was soon back at Cambridge and, by 1907 if not before, had begun his years of law coaching in association with D. T. Oliver of Trinity Hall.

In 1909 he married Helena, daughter of W. T. Scruby of Cambridge. She was an ideal partner for him. She made their home a happy one; and in the last years, when his powers were failing, her gay and loving care supported him to the end. She outlived him by only a few months. Their three children survive them.

In 1911 the list of lectures proposed by the Special Board for Law included the name of Mr. P. H. Winfield, with two courses of lectures (each for a single term) for candidates for the Ordinary Degree. Each year thereafter, his lecture commitments increased and, when the First World War intervened, he had begun to lecture also for Parts I and II of the Law Tripos. So far, however, his courses had been confined chiefly to select cases and problems in the various lecture topics—Contract, Torts, Criminal Law, Constitutional Law, Roman Law. In 1915 he was commissioned in the Cambridgeshire Regiment. He was not listed to lecture again until the Michaelmas Term, 1919.

Meanwhile, there was evidence that the old arduous method of earning one's living as a law coach, with the help of a few lecture fees, did not necessarily prevent an energetic and determined scholar from pursuing research during vacations. In April 1914 the *Law Quarterly Review* published the first of Winfield's many articles—'Some Bibliographical Difficulties of English Law'. Brief, forceful, and mature, it attacked the deficiencies then existing in legal bibliography and recommended reforms. Its style reminds one of the report which, nearly ten years before, had awarded him his school medal ('the rendering of Caesar was vigorous'); its content foreshadowed his *Chief Sources of English Legal History*, written ten years afterwards. In 1917, a longer article entitled 'The Writ of Conspiracy' followed (33 L.Q.R. 28), destroying Coke's theory that the writ was older than the Statute of Conspirators, 1293, and investigating the scope of that writ to the time of James I. A footnote to this article describes it as a section from a book not yet completed. That book, *The History of Conspiracy and Abuse of Legal Procedure*, was eventually published in 1921, with a preface indicating that it had been begun ten years ago and been interrupted by absence during the war. Evidently, therefore, the year 1911, in which Winfield added lecturing to his coaching labours, was the year in which his historical researches began in earnest. Presumably it was on these researches, pursued between 1911 and 1915, that he was approved in 1916 for the degree of LL.D.—a degree which his absence on war service delayed until 1918.

In April 1918 the *Law Quarterly Review* published a short article entitled 'Courts Martial from the Lawyer's Point of View'. It contains a little historical matter and ends by suggesting some minor reforms; but it is semi-popular in character and appears to have been based largely upon Winfield's own experience of such tribunals. It was probably written towards the end of 1917

(‘two years in the army’) in circumstances inconsistent with more scholarly work; but it well illustrates his tolerance and indeed admiration for the services. In August 1918 he was wounded in action. In 1919, three articles in the *Law Quarterly Review*, two of them historical and evidently pre-war work, pursued further his topic of maintenance. In that year, after a period of employment at the War Office, he returned to civilian life and, not without some hesitation, to Cambridge.

At Cambridge he was immediately given some measure of recognition by Trinity and St. John’s, each college appointing him to lecture in law. In the lectures proposed by the Special Board for Law for the year 1919–20 he was listed accordingly to lecture at Trinity College (Roman Law) and at St. John’s College (Torts and Criminal Law), not at the Law Schools as hitherto, with a total lecturing programme for the Michaelmas and Lent Terms of some 174 lectures together with an unstated amount of paper work and discussion classes. In the following year his lecture hours were somewhat reduced (154 *plus* a possible short course on Conflict of Laws) and were rather more evenly spread.

Winfield was undoubtedly a willing lecturer, and indeed a popular one. It must not be forgotten, moreover, that he had to support a growing family, that for the past four years his pay as a junior officer must have been gravely inadequate, and that in the Cambridge of those days an ordinary law teacher having no other means had necessarily to rely upon a problematical income from coaching fees together with a share of the fees paid by those who attended his lectures. It was therefore natural, however strong one’s inclination towards research, to earn what one could during term and pursue during vacation the unremunerated pleasures of researching. That Trinity and St. John’s had appointed him their lecturer was an assurance of a definite stipend, augmented by a proportion of the lecture fees paid by such students as attended from other colleges. In this way, for his lectures were well attended, he was able to make an adequate living. That, in doing so, he overburdened himself with teaching is undeniable. That the quality and output of his research remained high shows the manner of man that he was. In 1921, however, when St. John’s appointed him to the office of college lecturer and elected him into an official fellowship, his circumstances became easier. And in 1926 new statutes placed upon the university the responsibility of appointing and remunerating the lecturers in its faculties. Thus Winfield now became a

University Lecturer, and his appointment as a lecturer at Trinity ended; but, to his great pleasure, Trinity continued him in his High Table privileges there.

The year 1921, in which Winfield thus became a fellow of his college, saw the publication of his two monographs on the Abuse of Legal Procedure—the one historical and the other concerned with the present law. This division was not what he had originally intended and was not easily made. The historical part, however, was well suited to the new series of Cambridge Studies in Legal History under the general editorship of Professor H. D. Hazeltine and so became the first volume in that series. This historical part was largely the fruit of his earlier researches begun (so says the preface) ten years before, whereas the monograph on the present law was an addition made after the war had ended. They were reviewed somewhat guardedly by Roscoe Pound in the *Cambridge Law Journal* (1 C.L.J. 156) and enthusiastically by W. S. Holdsworth in the *Law Quarterly Review* (37 L.Q.R. 462; 38 L.Q.R. 102). To the historical volume Holdsworth devoted a leading article and concluded that Winfield's 'treatment of difficult and intricate material shows that he has a real aptitude for the study of legal history'. Reviewing the second volume, he marked the qualities which, as we now know, were to be typical of Winfield's later work: 'The treatment is thorough, the cases are clearly analysed, and the criticisms are often acute. It is a book which could not have been written by an author who had not studied the history of the law.'

In 1925, the Harvard University Press published Winfield's *Chief Sources of English Legal History*. This book was based on a course of lectures delivered at the Harvard Law School during the first half of the year 1923. It is, as Roscoe Pound described it in a laudatory introduction, 'An accessible, readable, reliable guide to the sources' from the beginnings of English legal literature to Blackstone; and Holdsworth wrote of it (42 L.Q.R. 253) that it does for the sources of English legal history all and more than all that the work of Dr. Gross did for general English history. Apparently no opportunity arose for a revised edition of this, Winfield's most important contribution to the study of our legal history. It has long been out of print.

Meanwhile Winfield had also been editing a number of minor textbooks. He began, it seems, with a revised edition of Wise's *Outlines of Jurisprudence*, thereafter affectionately known to students as 'Wise and Winfield' and prone to disappear from the shelves of law libraries. Then, after producing in 1923 the seventh

edition of Lawrence's *Principles of International Law*, he prepared the 1925 edition of that author's *Handbook of International Law*—a little manual popular with students and naval officers; and he even found time to prepare its next edition for publication in the year 1937, the very year in which his celebrated *Law of Tort* was published. His continuing interest in International Law bore further fruit during the late war, when he lectured at Cambridge to groups of army officers and published a little book, one of a series on Current Problems, entitled *The Foundations and the Future of International Law*.

As an editor of substantial textbooks, he was punctilious in preserving as far as possible their original character, marking his own alterations and insertions with square brackets. Such was his method, for instance, in his three editions (1942-50) of *Pollock on Contracts* and in *Salmond and Winfield on Contract*—a book which he prepared from the late Sir John Salmond's uncompleted work. He was joint editor, moreover, of the volume of *Cambridge Legal Essays* (1926) and of *Maitland's Selected Essays* (1936), and was editor-in-chief of the fourth edition (1947) of *Jenks' English Civil Law* in which he undertook also the revision of the preliminary general part and the sections on Quasi-Contract and Torts.

It may be thought that he was too easily persuaded to undertake editorial and other extraneous work of this type. It may be that, by undertaking it, he over-taxed his strength and diverted to it energy which would otherwise have been available for his original contributions to the law. Nevertheless, in his active years he was seemingly a man of tireless vigour of whom it would be difficult to say that the quality or quantity of his other work suffered. The steady stream of contributions to the learned journals of this country and overseas continued—a number of them have been reprinted in his *Select Legal Essays* (1952)—and he retained well after the retiring age his readiness to lecture and to write. One might suspect, perhaps, that some of this driving force derived from the lean hard years of the past. Yet much of the work he undertook was unremunerated: leading articles, reviews, the many hours spent in drafting opinions upon problems put to him by friends and colleagues and persons eminent in the law, his long service as a magistrate of the borough, the honorary editorship of the *Cambridge Law Journal* for twenty years (1927-47), and his unceasing personal interest in the undergraduates of his college and university—their games, their societies, and their careers.

In 1928 he was elected to the newly founded Rouse Ball Professorship of English Law at Cambridge and, as became a future member of the Lord Chancellor's Law Revision Committee, chose 'Law Reform' as the subject of his inaugural lecture (44 L.Q.R. 289). During the year 1929 he was temporary editor of the *Law Quarterly Review*, and he was President of the Society of Public Teachers of Law for the year 1929-30. In 1930, his zeal for the historical learning of English law was marked by election to the Council of the Selden Society, of which he afterwards became a Vice-President. Meanwhile, since his return from Harvard, he had published several articles on the history and development of various aspects of the law of Torts (e.g. 42 L.Q.R. 37, 184) and it is clear that the law of Torts was becoming increasingly his chosen field. As was his custom, he was approaching the present law by way of its history. In 1931 he published his *Province of the Law of Tort*, in which he sought to ascertain the scope and examine the boundaries of that branch of the law and of its overlapping neighbours such as Contract and Quasi-Contract. This somewhat formidable investigation had originated as Tagore Lectures delivered the previous year in Calcutta; and Pollock (47 L.Q.R. 588), who described it as a 'learned critical discussion which no advanced student of the Common Law can afford to neglect', thought it rather hard reading even for members of the legal profession and hinted some sympathy for a lecture audience of Indian students, ill acquainted perhaps with much of the necessary historical background. In its time, this strictly academic study did much to stimulate and clarify academic discussion in Quasi-Contract as well as in Tort—each of them subjects which were in the process of being developed further by the courts. But its chief importance, perhaps, lay in the fact that, having thoroughly surveyed his territory historically and geographically, Winfield was now in a position to build upon it. He had lectured on Torts since his return to Cambridge in 1919 and it had now become his sole lecture course and the main inspiration of his contributions to the legal periodicals. In 1935 he reviewed for the *Law Quarterly Review* its developments during the past half-century, emphasizing as most notable the broadening scope of tortious liability. And in 1937 his *Textbook of the Law of Tort* appeared.

The *Textbook* spread Winfield's reputation outside the academic world into solicitors' offices, barristers' chambers, into the courts of law, and among lawyers and law students wherever the Common Law is known. As we have noticed, Tort was a

growing subject. Moreover, it was in a peculiar situation in that, based upon the old forms of action, it was being shaken by the pressure of modern times; for the internal combustion engine and other novelties of modern life were continually raising problems that the old forms of action never knew. Already there were distinguished textbooks, such as *Pollock* and *Salmond*, in this field. But Winfield's book became at once a serious challenge. Professor Goodhart, now Master of University College, Oxford, reviewed it (54 L.Q.R. 126) with enthusiasm: accurate, clear, an unusual charm of style, and a brilliant analysis of the more difficult problems. He predicted, moreover, that it would be recognized by the Bar and the law teachers as an outstanding legal authority and that even the Bench, perhaps, would cite it without waiting (according to tradition) for its author's decease. These predictions were indeed fulfilled; and thus both book and author achieved a status among lawyers, from humble students to Lords of Appeal, which even Blackstone's *Commentaries* perhaps had hardly known. Only an expert, no doubt, could analyse effectively all the causes of this success. The law of Torts, dealing as it does with the common problems of everyday life, has an inherent interest greater perhaps than any other field of legal study; and Winfield, although he never dodged a difficult point, managed to maintain its liveliness, with pungent phrase and homely illustration, and yet almost imperceptibly to mould together the apparently conflicting opinions and authorities into a seemingly simple and workable unity. At times, of course, he did not hesitate to criticize or to hazard new theories of his own; and occasionally such a theory has provoked discussion and opposition—see, for example, a footnote to page 12 of the 1954 edition. But on the whole his views have stood and have indeed been a formative influence in our law. One of his great qualities, it seems, was that he did not invent or criticize for the sake of cleverness: he took the law as it stood, remembering its background and its purpose, its courts, its practitioners, and the lives of men; and he kept his feet on the ground. That, perhaps, is one main reason why a primarily academic lawyer, writing on a topic of current law, gained at once the confidence of students and teachers and of the legal profession. The *Textbook* went through five editions before he died and reached a sixth edition, prepared by a colleague and former pupil, in 1954.

In 1938 Winfield became Reader in Common Law to the Council of Legal Education, an appointment which he held—travelling to London to deliver lectures at the Inns of Court—



during the remaining years of his Cambridge professorship and for some six years after the professorship had expired. In 1943 he was appointed King's Counsel and soon afterwards was elected an Honorary Bencher of the Inner Temple. In the Birthday Honours of 1949 he was created Knight Bachelor. He was an Honorary Doctor of Laws of Harvard, of Leeds, and (1949) of London University. At the Congregation at which this last degree was conferred, the Public Orator presented him as 'the most distinguished academic lawyer of our time'.

On retiring from his professorship his interest turned again to the complexities of Quasi-Contract, to which he had devoted much attention in his *Province*. He wrote several articles on the subject—three are reprinted in the *Select Legal Essays*—during the period 1944–8, and prepared a short monograph which, considerably delayed in publication, appeared ultimately in 1952. Now, however, he was beginning to suffer increasingly from forgetfulness and, although he still retained much of his delight in the companionship of friends and books, was sadly conscious that his memory of them was failing. During the final year or so, he was seldom seen in his old haunts—the Squire Law Library, his college, the Inner Temple. He remained at home, ever courteous and hospitable, tenaciously noting in his textbooks so long as he was able the new decisions of the courts.

Although his life was so fully occupied with academic work and its necessary commitments—these had included, for instance, a period of service on the Council of the Senate—Winfield found much of his happiness in social relationships and in the rigour of a game. As an undergraduate, his first athletic affiliation had been his college boat club. Twice he had rowed two in the Lent races without much success: on the first occasion J. H. Beith, who was then captain of the Lady Margaret Boat Club, gave him an uncomplimentary report; on the second occasion he was in a First Boat that suffered the indignity of an over-bump. Thereafter he played lawn-tennis for the college, finally obtaining his colours in 1901. Here he found a game well suited to his temperament: a game in which a measure of subtlety and skill backed by a tenacity of purpose and seemingly tireless physical powers could bring an unexpected success. It remained his favourite pastime for nearly forty years. He was awarded 'Grasshopper' colours by the University Club; captained the county club in 1912–14; played regularly for the team of Cambridge M.A.s founded after the First World War; and remained a

formidable adversary until his virtual retirement from the game in the middle of the nineteen-thirties. When the Second World War came he was already over sixty years of age; yet with characteristic patriotism he joined the Home Guard and helped to man a watch-tower in the town.

During the last twenty-five years of his life, moreover, Winfield developed a keen interest in rugby football. He became President of his college club and of the University Club and was a regular spectator at Cambridge and at Twickenham. This was the period when, having attained his Chair, his former opportunities of personal contact with undergraduates were largely gone. His delight in the company and friendship of young people, and in particular, perhaps, of those who wore their manliness and courage with a light heart, enabled him to find here something which, combined with his zest for both the hurly-burly and the finer points of the game, gave him real pleasure and satisfaction.

He was, indeed, a genuinely sociable person. Even when increasing deafness, and latterly forgetfulness, began to make social occasions difficult for him, he loved to be among happy people, whether at his home with his small grandchildren around him or skilfully outmanœuvring an adversary on the croquet lawn, or at some festive occasion in college or elsewhere. And there was in him a courtesy which could put one instantly at ease, whether one were old or young. Though inclined in later life to be somewhat intolerant of disagreement on a legal problem, he was seldom impatient or irascible. Lean and erect of figure; a somewhat remote facial expression which relaxed readily into a friendly smile; the neat, elegant handwriting of his letters and manuscripts and on the blackboard of his lecture-room; the anxious willingness to devote time and trouble to any who sought his help or advice; a certain severity in matters of legal scholarship, backed by an intense respect for the courts of law; a mind uncomplicated and clear on the common matters of life. By these and by the quality of his work he will be remembered.

S. J. BAILEY