

Valediction to Mr Justice Morland
15 July 2004

5RB

Mr Desmond Browne QC:

On behalf of all those practising in the defamation field, I am here to record our real sorrow at your departure, as well as to express our very best wishes for a long and happy retirement.

Quite why I should have been chosen is not entirely clear: after all, it was your Lordship who once said that Mr Browne's "I'll only be a little bit longer"s were quite a lot longer than other people's.

Perhaps someone in the Court of Appeal Criminal Division thought it appropriate to pick a member of the Bar likely to take every point that could possibly be made on your behalf.

It is on occasions like these that Her Majesty's Judges come closest to dying and going to heaven, since it is the only time they catch even a hint of the contents of their obituaries.

And of course, the same motto is supposed to apply: nihil nisi bunkum.

Naturally in what follows I shall be speaking the truth; but I have to confess that biographical detail has not been easy to come by:

Why is it that your Lordship works so hard that he has no recreations, or none that can be disclosed to the readers of *Who's Who*?

Why is that such a clubbable man should belong to no clubs?

What exactly are the qualities of stoicism in your make-up, born of an education at the same establishment as that distinguished libel winner, Sir Richard Branson?

What were the heroic qualities of your national service which make Alexander, Hercules, Hector, Lysander and such great names as these seem inferior to a British Grenadier?

Unfortunately I can throw no light on these questions, and precious little more on your career at the Bar.

For those of us south of Watford, Merseyside is a distant land, about whose ways we can glean no more than what we read in the editorials of *The Sun*.

By all accounts for many years you had the measure of George Carman on the Northern

Circuit. But my skills with the ouija board are not such that I have been able to extract much by way of detail from the other side.

All I found in the Law Reports was *Cutler -v- Vauxhall Motors* in 1970 Queen's Bench, where you beat George Carman in the Court of Appeal with a novel point on damages apparently dreamed up by the trial judge, Donaldson J.

When you were appointed to the Bench in 1989, the whisper here in London was that you were one of the brewing Morlands, famous for Old Speckled Hen — an ale described as having a solid bubbly head, smoothness on the palate, and a hidden sweetness giving way to a balanced medicinal flavour in the finish.

That could hardly be bettered as a description of one of your Lordship's summing ups.

It is only with your appointment to the Bench that I can begin to speak of my own knowledge.

You have now served 15 years, about the same as the two Bulger killers combined, but without the need for anonymity on your release, or a ban on photography from Lady Hale when you pop out to the shops for a bottle of milk in your crimson cardigan.

From the start you showed a willingness to labour in the Augean stables cleansed by Michael Davies and Drake JJ.

But even as late as 1995 Lord Bingham could compare juries with sheep on an unfenced common.

Your Lordship may have lacked the clapped-out Volvo, which one of your predecessors used as a benchmark for juries, but you were certainly amongst the first to shepherd the sheep back to sanity on damages.

You were also the Judge at first instance in *Derbyshire CC -v- The Sunday Times*.

And if in retrospect it now seems that you were a little reluctant to welcome the enticing embrace of Article 10, that cannot be said of your judgment in *O'Shea -v- Mirror Group*.

Ms O'Shea claimed to be the spitting image of a model whose photograph had been used for a pornographic advertisement.

Fortunately for your Lordship, the Court was only concerned with facial resemblance.

For an upright man such as your Lordship to take the so-called horizontal approach to the

Convention showed remarkable boldness;

Ms O'Shea gained your sympathy, but no more than that.

To this day her case remains the only example of the direct use of Article 10 to mitigate strict liability under English defamation law.

As I know to my cost, you were equally quick to embrace the values of Article 8.

Now is not the time to debate the jurisprudential basis of *Naomi Campbell's* victory on away goals.

Suffice it to say that by a bare majority the House of Lords decided that one of your Lordship's judgments was worth more than three from the Court of Appeal.

Speaking for myself, I am agnostic on the point, having been accused of "absurdity" by your Lordship and of "sophistry" by the Court of Appeal.

Now is also not the time to try to answer Mr Piers Morgan's question as to why he received so little assistance from Your Lordship in finding his place in the bundle.

Personally, I put it down to old-fashioned, gentlemanly good manners.

Of the many highly publicised trials over which Your Lordship presided, it is impossible to forget *Hamilton v. Fayed*, with which you brought down the curtain on the 20th century.

Viewers will remember that you were played by Robert Hardy, an actor better known for playing a farmyard vet.

There were plans for Billy Connolly to play your clerk, until he learnt that it was a non-speaking role.

Today it is not the more notorious moments, such as Christine Hamilton's indignant denial that she had ever eaten a Harrods' sausage, which stick in my mind.

It was the graceful way in which you brushed aside one of my objections to George Carman's leading questions: "As Mr Carman gains experience," you said, "he will ask fewer leading questions."

Naturally, the summing up was straight down the middle, but as you have been heard to observe, "sometimes the middle is more to one side than the other".

Much the same can be said about the adjustable height of your right eyebrow, a barometer

of a witness's credibility if ever there was one.

In the same year as the Hamilton trial, your Lordship gave your important and unappealed judgment in *Godfrey -v- Demon Internet*, concerning the liability of ISPs for what appears on the Internet.

That judgment may now be under the beady eye of the Law Commission, but when it was scrutinised by the High Court of Australia in *Gutnick* in 2002, it was approved and duly followed.

Predictions that you had tolled the death-knell of the Internet have proved a trifle alarmist – it is still possible to find no less than 3,015 references to Mr Justice Morland in 0.45 of a second in a Google search.

On a more frivolous note, your Lordship may also remember the *Gregson* case against Channel Four. After the jury had ruled on meaning, you decided to discharge them and try the case on your own.

Three of the jurors were clearly very disappointed, and ostentatiously came and sat on the Defendants' side of the court.

My opponent raised what he saw as blatant partisanship with your Lordship, but just as you were about to rule, one of the jurors interrupted and said: "*is this a ruddy wedding or what?*"

Others will have to speak about your contributions to the common law outside the law of libel.

All I can say is that it is not surprising that in the *Vowles* case, you should have ruled that a rugby referee has a duty to control loose scrums with the greatest possible care.

That, of course, is precisely what Your Lordship has now been doing in court 13 for many years.

Those of us who have been in the front row of those scrums, and survived without injury, thank you for it.

We shall miss you, and your provisional views — a case, if ever there was one, of shutting the stable door with the horse still in it.

We shall also miss Jim McKinnon, your colleague in arms, though fortunately he has not reached the age of statutory senility and will be soldiering on, if a former CPO will forgive the phrase.

This is a sad day– definitely not one for hampers and champers all round.

We had thought of presenting you with a chocolate soldier, but we could not discover whether you preferred milk or plain.

Instead you leave a more permanent memorial: the Bar's affectionate respect and a notable contribution to the law and practice of defamation.

I know I speak for everyone in wishing you and your wife a very long and happy retirement.

Finally, on a purely personal note: can I say that I have not forgotten that I owe you lunch: it's just that it has not been easy to decide on the right place to reciprocate for fish pie in the Judge's lodgings at Stafford.