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ALFRED THOMPSON DENNING: A 20TH CENTURY ENGLISH LEGAL ICON RE-EXAMINED*

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I.

1. In the Autumn of 1705 a 20 year old youth walked some 250 miles from Arnstadt to Lübeck with a view to seeing an ageing and elderly composer organist with a legendary reputation. The organist in question was Dietrich Buxtehude: the callow youth was one Johann Sebastian Bach. It was in much the same spirit that a 20 year old callow law student travelled from Tipperary to London in early October 1978 with a view to seeing a venerable and ageing English judge with a legendary reputation. The legal figure was Lord Denning and the callow youth was….well, me.

2. It is at this point that this altogether extravagant comparison must immediately end: Bach stayed several months with Buxtehude. The latter, astounded by the young lad's precocious organ playing and compositional skills, promised him that he shortly would be Kapellmeister at Lübeck if only he would stay. You will not be surprised to learn that I had no such luck and Denning certainly did not promise me the reversion to the Master of Rolls if I only I could prolong my stay in London. But in October 1978 none of this mattered to me. I had got to see Denning who, I seem to recall, sat on that occasion with Shaw and Eveleigh LJJs. Nor was the day particularly interesting in itself. My recollection is that Denning delivered a judgment to which the others assented. He then dealt with a series of personal litigants with striking courtesy and remarkable patience, often adding a touch of local knowledge regarding such diverse matters as the train timetables and local church services. I knew immediately I was in the presence of greatness and to have seen him in action was sufficient. In the words of the poet…….. "And Wilderness were Paradise enow…."

3. What had prompted all of this? Our lecturer in contract in my undergraduate BCL class at University College, Dublin, Professor Robert Clark, was himself English. He liked to profess indignation at the latest Denning judgments, muttering that the common law would take 300 hundred years or more to recover. And yet one could, I think, at the same time detect a faint touch of national pride: it was, after all, not everywhere where you could encounter such a remarkable and distinctive legal figure. Thus, when approaching Denning, we all, so to speak, have to go through the Red Channel: we all have something to declare. For me Denning was a judicial genius, his failings notwithstanding. If his reputation is presently somewhat eclipsed, a more rounded view of this great judge will surely presently emerge. In this lecture, therefore, I propose to examine just why he was great and to explore why Denning's judicial oeuvre and style changed so markedly in the second part of his career.

II.

4. Denning was first appointed to the High Court in March 1944 where he was assigned to what was then the Probate, Divorce and Admiralty Division. But thanks to the insight of the incoming Labour Lord Chancellor Jowitt, Denning was first transferred to the King's Bench Division in October 1945 and then subsequently promoted by him to the Court of Appeal in October 1948. While Denning was then in turn promoted to the House of Lords in 1957, I think that it was the period between 1945 and 1957 which shows Denning at his very best. Any number of cases could be cited from this period which marked the arrival of an important, new and distinctive voice which would help not only to modernise and transform the common law, but whose judgments would come to define it.

5. I will just shortly mention but three. Although Denning had as counsel appeared for the party relying on an exemption clause in *L'Estrange v. Graucob*[1], he gave the first of many

[1] [1934] KB 394.

judgments[2] which sought to curtail the effect of such clauses in *Curtis v. Chemical Cleaning and Dyeing Co.*[3] Here a shop assistant had negligently misrepresented the effect of the clause to a customer and this, Denning held, was sufficient to disentitle the defendant from relying on the exemption clause[4]. One can see here that Denning was prepared, if necessary, to go further and to create an estoppel in favour of the customer. In *Royal Crown Derby Porcelain Co. Ltd v Russell*[5] Denning authoritatively re-stated one of the specialist rules of statutory interpretation in clear and authoritative terms:

> *"*I do not believe that whenever a Parliament re-enacts a provision of a statute it thereby gives statutory authority to every erroneous interpretation which has been put upon it. The true view is that the court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision, re-enacted the statute in the same terms. But if a decision is, in fact, shown to be erroneous, there is no rule of law which prevents it from being overruled."[6]

6. While the law reports from this period bear ample testament to Denning's remarkable gifts, in some ways one need look no further than Denning's widely praised and magisterial dissent in *Candler v. Crane Christmas & Co.*[7]. Here the plaintiff had been invited to invest in a small private

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[2] See, e.g., *Karsales (Harrow) Ltd. v. Willis* [1956] 1 WLR 936; *Photo Production Ltd. v. Securicor Transport* [1978] 1 WLR 863 (but reversed [1980] AC 827); *George Mitchell Chesterhall v. Finney Lock Seeds* [1983] 2 AC 803. The latter case was Lord Denning's last judgment delivered on 29 September 1982. On appeal, Lord Diplock delivered the following touching tribute ([1983] 2 AC 803 at 810):

> "I cannot refrain from noting with regret, which is, I am sure, shared by all members of the Appellate Committee of this House, that Lord Denning M.R.'s judgment in the instant case, which was delivered on September 29, 1982 is probably the last in which your Lordships will have the opportunity of enjoying his eminently readable style of exposition and his stimulating and percipient approach to the continuing development of the common law to which he has himself in his judicial lifetime made so outstanding a contribution."

[3] [1951] 2 KB 805.

[4] "…any behaviour, by words or conduct, is sufficient to be a misrepresentation if it is such as to mislead the other party about the existence or extent of the exemption. If it conveys a false impression, that is enough. If the false impression is created knowingly, it is a fraudulent misrepresentation; if it is created unwittingly, it is an innocent misrepresentation; but either is sufficient to disentitle the creator of it to the benefit of the exemption": [1951] 2 KB 805 at 808-809.

[5] [1949] 2 KB 417.

[6] [1949] 2 KB 417 at 429.

[7] [1951] 2 KB 164.

company. He first took the precaution of seeking to inspect the company's accounts. He was shown the books at a meeting at which a representative of the auditors was present. The plaintiff's investment was, however, lost as it transpired that the accounts had been negligently prepared

7. There is here to so much to admire. Denning's judgment holding that *on these facts* accountants owed a duty of care "to all those whom they know will rely on their accounts in the transactions for whom they accounts have been prepared"[8] is not only the bridge which carried the law of negligence from *Donoghue v. Stevenson*[9] onto *Hedley Byrne v. Heller & Co*.[10] and beyond but it was expressed authoritatively in language of pellucid clarity. Denning himself explained his methodology at the time in an article he wrote in 1957 entitled "The way of the Iconoclast":

> "What, then, is the way of an iconoclast? It is the way of one who is not content to accept cherished beliefs simply because they have long been accepted. If he finds that they are not suited to the times or that they work injustice, he will see whether there is not some competing principle which can be applied to the case in hand. He will search the old cases, and the writers old and new, until he has found it."[11]

8. *Candler* is Exhibit A of the early Denning methodology. Denning's immense knowledge of the case-law enabled him "to search the old cases" and to navigate his way through the 19th century cases from *Winterbottom v. Wright*[12] through to *Le Lievre v. Gould*[13] and on to *Donoghue v. Stevenson* itself.

9. One possibly incidental feature of *Candler* might be mentioned here. The judgment is famous for the "timorous souls" remark to which the majority led by the genial Asquith LJ reacted with commendable equanimity.[14] But it was not all plain sailing. Denning's expansive approach to

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[8] [191] 2 KB 164 at 185,
[9] [1932] AC 562.
[10] [1964] AC 465.
[11] (1957) 5 *Journal of the Society of Public Teachers of Law* 77 at 89.
[12] (1842) 10 M & W 109.
[13] [1893] 1 QB 491.
[14] "I am not concerned with defending the existing state of the law or contending that it is strictly logical – it clearly is not. I am merely recording what I think it is. If this relegates me to the company of 'timorous souls', I must face that consequence with such fortitude as I can command": [1951] 2 KB 164 at 195.

issues of statutory interpretation[15] and frustration of contract[16] led to his "verbal beheading"[17] on at all least two occasions by Lord Simonds. Both Harman L.J.[18] and Lord Hodson[19] also took issue with Denning in direct and highly personalised terms regarding the so-called "deserted wife's equity". Heuston states that some senior legal figures from that period were simply not prepared to repeat all that they had seen and heard: one suspects, however, that these comments of Simonds, Harman and Hodson were just the tip of a very large iceberg of resentment, impatience and downright jealousy on the part of some other senior judges. If this is so, then it must have taken considerable personal courage for Denning to remain steadfast in the face of such personalised attacks - both public and private - from his colleagues.

III.

10. Confidence and courage were, however, qualities which Denning possessed in abundance. About a year after he had returned to the Court of Appeal as Master of the Rolls, he agreed to a request from Prime Minister Macmillan to conduct an inquiry into the Profumo affair.[20] If Denning found the details of the sexual proclivities of the Ward/Keeler circle so personally upsetting that "he

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[15] *Magor & St. Mellons RDC v. Newport Corporation* [1952] AC 189.

[16] *British Movietown News Ltd. v. London and District Cinemas Ltd.* [1952] AC 166.

[17] "I, too, was accused of heresy - and verbally beheaded - by Lord Simonds. You can read it in *Midlands Silicones Ltd. v. Scruttons Ltd.* [1962] AC 446.": Denning, *The Family Story* (London, 1981) at 202.

[18] In *Campbell Discount Co. Ltd. v. Bridge* [1961] 2 WLR 596 at 605 where Harman L.J. is reported as having said:

> "Since the time of Lord Eldon the system of equity for good or evil has been a very precise one and equitable jurisdiction is exercised on well known principles. There are some who would have it otherwise, *and I think that Lord Denning is one of them. He, it will be remembered, invented an equity called the equity of the deserted wife. That distressful female's condition has really not been improved at all now that this so-called equity has been analysed."* (emphasis supplied)

One may suspect that somebody must have had a word with Harman subsequent to the publication of the judgment in the WLRs but because the version in the Official Reports omits these highlighted words ([1961] QB 445 at 459) and replaces them with a more anodyne version:

> "There are some who would have it otherwise, but as at present advised I am of opinion that, at any rate in the instant case, there is no equitable principle that can be called in aid."

[19] "[I was] one of the wicked men who was a member of that section of your Lordships' House which made the decision [in *National Provincial Bank v. Ainsworth* [1965] AC 1175] which my noble and learned friend Lord Denning dislikes so much...Lord Denning moves us to tears every time he mentioned a deserted wife, the poor woman he has been protecting in the Court of Appeal for years…" HL Debs Vol. 275, col. 649.

[20] *Lord Denning's Report: The Circumstances leading to the Resignation of the Former Secretary of State for War, Mr. JD Profumo* (Cmnd., 2152)(HMSO, 1963).

sent the lady shorthand typists from the room"[21], the striking headlines in parts of the report such as "The man in a mask" and "The man without a head" nonetheless ensured that Denning would thereafter be a public figure.[22]

11. In some ways the Profumo report was a turning point in Denning's career. Note that I am not here concerned with the correctness of the findings, or the propriety of the assurances regarding confidentiality given by Denning to the participants to the effect that their evidence would never be published[23] or even the procedure which was followed. No: what is striking for me is that the publicity had affected Denning: he had become a famous judge whose pronouncements were now newsworthy. One might say that thereafter the pure clear water hewn from the springs of the common law which had heretofore characterised the classic judgments of the late 40s and the 50s such as *High Trees* and *Candler* was allowed over time to become diluted with a certain fizziness borrowed from Fleet Street.

12. There is here, I think, a comparison between post-Profumo Denning and the psychological torment which publicity and fame brought to the Finnish composer, Jean Sibelius. Both came from respectable middle class stock, but neither could be said to have come from privileged backgrounds. Both had made their reputations through their own genius, hard work and effort. By the 1930s Sibelius had reached the height of his (unexpected) fame, especially in the English-speaking world. He had achieved an undreamt of standing in the musical world and his audience quested for - and demanded - more. Sibelius's response was one of acute self-doubt, retreating to reclusiveness and

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[21] Thorpe, *Supermac: The Life of Harold Macmillan* (London. 2010) at 544.

[22] When the Profumo report was published on 26 September 1963, over 4,000 copies were sold in the first hour at HMSO in Kingsway: see Thorpe at 545.

[23] Dyson, *A Judge's Journey* (Hart, 2019) states that (at 153) that Lord Mackay LC had subsequently "modified the undertaking and reduced the length of the embargo to 100 years." Dyson further records that in 2013 the embargo date was further reduced following a decision of the National Archive Advisory Council.

alcoholism and finally burning his long awaited 8th symphony along with some other works in an auto-da-fé in the family stove at Ainola sometime in 1943 or 1944. [24]

13. I think that we may be fairly confident that no such fire of reserved judgments ever took place at Whitchurch. In fact, the Profumo Report induced exactly the opposite response in Denning. The Report was a great popular success, laden as it was with gossipy details regarding the activities of the Establishment. But this very success and his newly acquired - if hitherto unexpected - status as a national figure seems to have encouraged Denning to abandon some of the traditional, orthodox features of judging. In contrast to the self-doubt of Sibelius, the success of Profumo and the popular acclaim which went with it seems to have encouraged and enhanced his self confidence to the point where at times it slipped into self righteous conviction, a trait which is perhaps visible in the later tussles with the Houses of Lords regarding matters such as exemplary damages in defamation cases[25] and trade union activity.[26]

14. Denning's writing style also changed. The clear, vivid and elegant language of such early classics as *In re Wingham*[27] - where Denning rejected the idea that the phrase 'actual military service' contained in s. 11 of the Wills Act 1837 should be construed by reference to Roman law practice[28] - gave way at times to a language of populist simplicity in which respect for cadence, style and form - the hallmarks of elegant English prose - seems to have diminished.[29]

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[24] See, e.g., Grimley, *Jean Sibelius: Life, Music, Silence* (London, 2021) at 199-202.
[25] *Broome v. Cassell & Co.* [1971] QB 354; [1972] AC 1027.
[26] See, e.g., *Duport Steel v. Sirs* [1980] 1 WLR 142; *Express Newspapers v. McShane* [1980] AC 672.
[27] [1949] P. 187.
[28] Here the Court of Appeal held that a testamentary document made by an RAF trainee based in Canada had been made on active military service and was thus exempt from normal statutory formalities for execution. As Denning put it ([1949] P.187, 195):

> "If I were to inquire into Roman law, I could perhaps after some research say how Roman law would have dealt with its soldiers on Hadrian's Wall or at the Camp at Chester….Rid of this Roman test, this Court has to decide what is the proper test."

[29] It would be difficult to improve on Heuston's words:

IV

15. In the period between 1962 and 1982 – roughly the post-Profumo era – Denning delivered thousands of judgments, most of them of supremely high quality. I just want to take five judgments to highlight aspects of this distinctive oeuvre.

16. In *Jarvis v. Swan Tours*[30] Denning awarded damages for disappointment, distress and frustration caused by a disappointing holiday experience which itself amounted to a breach of contract. This is still really the leading contemporary authority for damages for disappointment occasioned by a breach of contract. This is an example of Denning's almost unrivalled ability to march through a thicket of somewhat unhelpful authority[31] in order to craft a fair result and an effective remedy:

> "Denning's style had always been unusual: by the mid-seventies it was not quite so admired as it had been. The structure of the judgments was as clear and sound as ever, and often praised by his fellow judges, but a certain striving after effect had become noticeable in the style rather than in the arrangements. There were few or no subordinate clauses and sometimes no verb in the sentences."

For a not atypical example of this later Denning style, see the following passage from *Hubbard v. Pitt* [1976] QB 142 at 175:

> "But there was nothing in the nature of a public nuisance here. No crowds collected. No queues were formed. No obstruction caused. No noises. No smells. No breaches of the peace. Nothing for which an indictment would lie, nor an action on the relation of the Attorney General. And if there was no public nuisance, there can be no question of any individual suing for particular damage therefrom."

[30] [1973] QB 233.

[31] "It has often been said that on a breach of contract damages cannot be given for mental distress, Thus in *Hamblin v. G.W.R.* 1 H. & N. 441; Pollock CB said that damages cannot be given for the disappointment of mind occurring by the breach of a contract". And in *Hobbs v. London & South Western Railway* (1875) LR 10 QB122, Mellor J said that 'for the mere inconvenience, such as annoyance and loss of temper, or vexation, or for being disappointed in a particular thing which you have set your mind upon, without real physical inconvenience resulting, you cannot recover damages'. The courts in those days only allowed the plaintiff to recover damages if he suffered physical inconvenience, such as, having to walk five miles home, as in *Hobbs'* case; or to live in an over-crowded house, *Bailey v. Bullock* [1950] 2 All ER 1167.

I think that those limitations are out of date. In a proper case damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort. One such case is a contract for a holiday, or any other contract to provide entertainment and enjoyment. If the contracting party breaks his contract, damages can be given for the disappointment, the distress, the upset and frustration caused by the breach. I know that it is difficult to assess in terms of money, but it is no more difficult than the assessment which the courts have to make every day in personal injury

17. It is true that many have criticised Denning for inconsistency in terms of traditional liberties. Perhaps we should not be altogether surprised that someone who was prepared to send the female stenographers from the room during the course of the Profumo inquiry would also be prepared to excuse the peremptory expulsion of a female student who had allowed a boyfriend to stay overnight at a teacher training college.[32] And Denning's endeavours to restrict and constrain the operation of trade unions and the operation of the pre-Thatcher industrial relations legislation deserve a separate series of lectures in their own right. But deep down Denning stood for the traditional liberties cherished by the common law and this is why his dissent in *Hubbard v. Pitt*[33] is an important manifestation of his belief in the right of free speech and free assembly.

18. Here left wing picketers protested on the street outside the offices of an estate agent who, it was said, was responsible for encouraging the "gentrification" of Islington. Denning refused to grant the interlocutory sought to restrain picketing, saying:

> "[The courts] should not interfere by interlocutory injunction with the right to demonstrate and to protest any more than they interfere with the right to free speech; provided that everything is done peaceably and in good order. That is the case here. The only thing of which complaint can legitimately be made is the placards and leaflets. If it turned out at the trial that the words on the placards and leaflets were untrue, then an injunction should be granted. But not at present when, for aught we know, the words may be true and justifiable. And if true, it may be very wholesome for the truth to be made known."[34]

The Birmingham Six

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cases for loss of amenities. Take the present case. Mr. Jarvis has only a fortnight's holiday in the year. He books it far ahead, and looks forward to it all that time. He ought to be compensated for the loss of it."

[32] "This is a fine example to set for others! And she a girl training to be a teacher!" *Ward v. Bradford Corporation* (1970) 70 LGR 27.
[33] [1976] QB 142.
[34] [1976] QB 142.

19. There is no getting away from the fact that Denning's judgment in *McIlkenny v. Chief Constable*[35] has entered popular consciousness in my home country and not for reasons that do him much credit. His "appalling vista" comments are presented as evidence of the fact that "British Establishment judiciary" were prepared to keep innocent men in jail rather than face up to the truth.[36]

20. Here the plaintiffs had been convicted of murder following the appalling Birmingham bombs of November 1974 in which 21 persons were killed. It was accepted that the plaintiffs had been seriously assaulted while in custody. The key question was whether they had been assaulted by the police or whether they had subsequently been assaulted by prison officers. This was critical because if they had been assaulted while in police custody then the confessions which they had made in such custody would not have been admissible. During their trial the police officers denied that they had been assaulted by them. This evidence was accepted by the jury.

21. During the subsequent prosecution of the prison officers for assault, a specialist in forensic evidence gave evidence that the six accused had been assaulted *both* while in police custody *and* in the custody of the prison officers. The plaintiffs sought to rely on that evidence in their action for civil damages against the police. Following a learned disquisition on the law of estoppel and abuse of process, Denning was quite correct to say that one cannot *generally* seek to mount a collateral attack on a criminal conviction by means of civil proceedings.

22. Yet if justice in any place in a legal system, this principle cannot be converted into an absolute rule. Denning nevertheless continued:

> "If the six men win, it will mean that the police were guilty of perjury and threats; that the confessions were involuntary and were improperly admitted in evidence; that the convictions were erroneous. That would mean that the Home Secretary would either have to recommend that they be pardoned or he would have to remit the case to the Court of

[35] [1980] 1 QB 283.

Appeal…This is such an appalling vista that every sensible person in the land would say: it cannot be right that these actions would go further."

23. As I have previously written:

"These deeply unfortunate words would later haunt Denning, not least when these convictions were later quashed.[37] It is, perhaps, easy to be wise after the event, but a judge as experienced as Denning ought surely to have been sufficiently astute to realise that there was then – even by 1980 - a considerable body of evidence to show that the police had assaulted the six men, not least the specialist medical evidence which the prison officers had led in their subsequent criminal trial to which he alludes in his judgment."[38]

Denning and Diplock tussles

24. It is interesting to compare the respective approaches of Denning and Diplock to two key procedural issues which are at the heart of, respectively, private international law and administrative law. In the first of these, *The Siskina*[39], raised a problem which was particularly acute for London as a world centre for international trade. Could one obtain a *Mareva*-injunction to restrain the disbursement of insurance moneys where the potential judgment creditor had a cause of action not in England, but abroad? Here The Siskina had sunk in somewhat mysterious circumstances in Greek waters and the London insurers had paid out a large sum by way of compensation. Denning[40], reversing a strong judgment of Kerr J in the High Court, was robust in his belief that the court had such a jurisdiction to grant such an injunction:

"The shipowners are a 'one ship' company, whose one ship *The Siskina* is sunk beneath the waves. They have no other ship. They have no business and have no intention of carrying on any business. They have no assets except the insurance moneys of $750,000 payable by London underwriters for the loss of the *Siskina*.… The cargo-owners want the insurance

[37] *R v. McIlkenny* (1991) 93 Crim.App.Rep. 278.
[38] "Holmes and Denning: Two 20th Century Legal Icons Compared" (2007) 42 *Irish Jurist* 119 at 133.
[39] [1979] AC 210.
[40] Jointed by Lawton LJ; Bridge LJ dissenting.

moneys of $750,000 retained in England - or a sufficient part of it - until their claim for damages is settled. Otherwise they are afraid - with good reason - that the $750,000 will be paid out to the shipowners and deposited in Switzerland, or in some foreign land: and the cargo-owners will have no chance of getting anything for all the damage they have suffered."[41]

25. On appeal, however, the House of Lord reversed Denning.[42] Lord Diplock took the view that an interlocutory injunction could only be granted in aid of proceedings that could have been commenced in the English courts:

"Since the transfer to the Supreme Court of Judicature of all the jurisdiction previously exercised by the court of chancery and the courts of common law, the power of the High Court to grant interlocutory injunctions has been regulated by statute. That the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment, was first laid down in

[41] [1979] AC 210 at 228. Denning closed his judgment in classic-late Denning style ([1979] AC 210 at 236:

> "To the timorous souls I would say in the words of William Cowper:
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> 'Ye fearful saints, fresh courage take,
> The clouds ye so much dread
> Are big with mercy, and shall break
> In blessings on your head.'
>
> Instead of 'saints' read 'judges'. Instead of 'mercy' read 'justice.' And you will find a good way to law reform."

[42] As Lord Leggatt JSC put it in *Broad Idea International v. Convoy Collateral* [2022] 2 WLR 703 at 710:

> "Lord Denning afterwards wrote that, although well used to reversals by the House of Lords, they were "never so disappointing as this one", particularly because he felt the decision was unjust to the buyers of cargo in the Middle East: see Denning, *Due Process of Law* (1980), p 141."

the classic judgment of Cotton LJ in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39-40, which has been consistently followed ever since."[43]

26. It is striking that in a very recent decision, *Broad Idea International v. Convoy Collateral*[44] a (bare) majority of the Privy Council concluded[45] that the law had taken a "wrong turn"[46] in *The Siskina,* thereby restoring the original judgment of Denning in preference to that of Diplock.

27. The other great case is *O'Reilly v. Mackman.*[47] Could one effectively challenge a public law decision by a form of declaratory action proceeding by writ, thereby by-passing the special procedure for judicial review challenges contained in Ord. 53 RSC? This, like *The Siskina*, presented a type of knotty procedural issue for which Denning had generally little patience.

28. Both the judgments of Denning in the Court of Appeal and Diplock in the House of Lords can be regarded as masterpieces in their elegant exposition of the development of post-war administrative law. But whereas Denning only laid down a general rule to the effect that it was an abuse to proceed by action "when he would never have been granted leave to go for judicial review"[48], Diplock appeared to have gone further – and perhaps too far – in saying, more or less, that this was automatically the case when one proceeded by action when one could have gone by judicial review. This itself has given rise to much (needless?) disputes as to characterisation and perhaps in this respect it is Denning rather than Diplock who has won the verdict of history.

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[43] [1979] AC 210 at 256.
[44] [2021] UKPC 24, [2002] 2 WLR 703.
[45] Over dissents from Lord Reed PSC, Lord Hodge DPSC and Sir Geoffrey Vos MR.
[46] "The shades of *The Siskina* have haunted this area of the law for too long and they should now finally be laid to rest": [2022] 2 WLR 703 at 744, per Lord Leggatt JSC.
[47] [1983] 2 AC 237.
[48] [1983] 2 AC 237 at 258.

29. What, then, made Denning such a remarkable judge? He was certainly gifted with all the talents: creativity, insight, judgment, erudition, courtesy, patience, a penchant for hard work and an elegant writing style. But there was something else as well: Denning loved the common law in the same way as he loved the Book of Common Prayer. Just as the characters in Trollope's Barsetshire novels are consumed by ecclesiastical politics and the doings of the cathedral chapter, Denning was devoted to the English legal system in much the same way as Rev. Septimus Harding was to the rituals and practices of the Church of England. For both, their respective institutions represented not only a way of life, but were also a matter of national pride. And I think it is this which fundamentally explains Denning's impatient iconoclasm: he so wanted the common law to be fairer and better that he was determined to drive fundamental change. This not only explains *Candler* (and a host of other duty of care cases), but it is at the heart of much of his approach to private law generally, ranging from the approach to exemption clauses on the one hand to the deserted wife's equity on the other.

30. In some ways it was all the reverse of *Barchester Towers*: when Denning came to the bench the "Low Church" virtues of formalism, literalism and precedent were in the ascendancy. By the end, however, after what Rev. Arabin might have called "hard fighting", Denning almost single-handedly re-took Hiram's Hospital on behalf of a "High Church" of judicial creativity, innovation and a certain disdain for precedent and thereby awakened the common law from its slumbers.

31. And so in closing I may be allowed to claim the privilege of the outsider by giving a detached assessment: Denning's liberation of the common law ushered in a new golden phase of creativity and growth in English law in both private and public law, inspired a new generation of stunning judicial talent and paved the way for necessary constitutional reform such as the creation of the UK Supreme Court. If Denning had his faults - faults which perhaps were accentuated with the passage of years - one can nonetheless say as Posner said of Holmes, that he was not perfect,

only great.[49] It has been a special privilege in this place and on this occasion to have been allowed to pay tribute to that greatness.

*Gerard Hogan, judge of the Supreme Court of Ireland

[49] Posner, *The Essential Holmes* (Chicago, 1992) at xxx.