

Address of Deemster Corlett to pay tribute to

His Honour Thomas William Cain QC, CBE, TH

June 1st 1935 to April 30th 2021

21st May 2021

Your Excellency, Mr President, Mr Speaker, Chief Minister, Mr Attorney, Your Honours, Your Worships, Members of the Manx Bar.

It is my privilege today to pay tribute on behalf of the judiciary to His Honour William Cain. It came as a shock to learn of His Honour's sudden passing and to know that we have lost an outstanding advocate, Attorney General and Deemster.

It was William Cain who brought me back to the Isle of Man after my time at Oxford. An advert appeared in the local press for an articled clerk in the Attorney General's Chambers in 1981. William had been appointed Attorney General the previous year, and news of his appointment and his reputation as a brilliant lawyer had reached me. I have to say that competition for that post of articled clerk was not particularly strong, as very few were starting articles in those days when the Manx Bar itself was only around 25 in size.

The Chambers in those days was also tiny. Michael Moyle did all the prosecutions and civil litigation, there were two legislative draftsmen, a couple of conveyancers and a secretarial pool, plus a librarian (latterly Sally Bolton – later of the Manx Bar) and of course Kathleen Quane as the AG's PA.

It was however a fascinating time to be in the Attorney's chambers. One of the first cases I assisted with was the famous appeal in the birching case of O'Callaghan v Teare where William Cain submitted, and the Appeal Court agreed, that in putting into effect a sentencing policy, the judiciary should act in conformity with the Isle of Man's international treaty obligations, including those set out in the European Convention on Human Rights. As a result of a cleverly

reasoned decision of Hytner JA and Deemster Luft, birching ceased to be a sentence which could properly be imposed as a matter of practicality, although it was another 12 years before it was finally removed from the statute book, it taking until 2001 for that overdue reform fully to come into force.

I also remember His Honour as Attorney General appearing in the appeal in the constitutionally highly important case of CB Radio Distributers Ltd in October 1983 which dealt amongst other matters with the power of the UK parliament to legislate for the Island.

His Honour was AG from 1980 to 1993 during which time with the able assistance of the two legislative draftsmen Ken Gumbley and Michael Boyde, the Island's statute book was transformed. He initiated the concept of a governmental legislative programme which was in those days drawn up by the Attorney General. It is difficult to pick out any particular highlights, but probably the most important was the elegantly drafted Government Departments Act 1987 which ushered in a ministerial form of government and was preceded by the appointment of Sir Miles Walker CBE as the Island's first Chief Minister in 1986. The disparate and rather chaotic system of boards and offices was abolished, thus avoiding cases such as the petition of doleance brought by the Health Services Board against the Board of Social Security concerning a court of inquiry under the Trade Disputes Act 1936, which I well remember attending as William's articled clerk in February 1982.

One other abiding memory of my period of articles is the first conference of the Law Officers of Small Commonwealth Jurisdictions in 1983. This was entirely William's idea and it proved to be a resounding success. It was held at the Castlemona Hotel and attracted delegates from around the world. One topic concerned "law reporting in small jurisdictions" and out of this seed was born the Manx Law Bulletin (produced in house by the AG's chambers) and more crucially the professionally produced Manx Law Reports, the first volume of which covered the years 1981 – 1983.

The importance of the MLR's cannot be overstated. The Isle of Man led the world in the production of law reports for a small jurisdiction. Until then decisions of the Manx courts were only haphazardly available to the profession and the wider public, if at all. There were therefore no properly published legal case precedents, on which all mature common law jurisdictions rely. As a result of William's initiative, we now have a set of immaculately produced and authoritative reports now dating back to 1522. (2020 volume now available!) They are in daily use and provide an invaluable source of knowledge for practitioners and judges alike. Without the MLR's the Island could not claim to be a properly functioning independent jurisdiction. With them the island took another vitally important step in becoming a fully-fledged and grown –up country.

William Cain was a far-sighted moderniser. While AG he brought about very significant changes to the Rules of Court, streamlining and abolishing archaic court procedures, a path upon which he vigorously continued when he became a Deemster. While he was a proud Manxman, he was rightly impatient of what was in the 1980's in particular a reactionary, deeply conservative and intolerant strand in Manx society and he looked to Europe and internationally, determined that the Island should not be an international pariah and that it should conform with international norms and in particular the Island's international human rights obligations. As a result, the Island eventually, in 1992, decriminalised male homosexuality and in 1993 abolished the death penalty.

Eventually also he was persuaded to leave the office of Attorney General and to become Second Deemster in 1993, an office in which he served until 1998, then becoming First Deemster, before retiring in 2003. He enjoyed a particularly close relationship with the late Deemster Kerruish and they were a very strong and formidable team. During his time as Second Deemster he presided over many jury trials together with a large volume of civil and family cases. From 1998 onwards he produced an important body of civil judgments which are still regularly consulted and cited in court. By way of example I mention the NatWest Offshore case of June 1998 dealing with the recognition of overseas mental health receiverships, Kelsh v

Scottish Provident, June 1998 also, dealing with breaches of data protection legislation, Deras v Ocean Marine, October 1998, on the subject of the international service of Manx proceedings, and Re Heginbotham (1999) which explained the Fraudulent Assignments Act 1736. During this time one sees a move (reflected in the Island's progress as an international finance centre) from the Deemsters' more traditional fare of domestic land and estate disputes to complex cases with an international flavour about the conflict of laws, trusts and banking. His Honour's judgments in Re Osiris, Rosewood v Schmidt, Blayney and Grace and Re Alliance and Leicester being some examples of this evolution. He also handed down important decisions in the fields of personal injury, judicial review and contempt of court.

I appeared before His Honour many times as an advocate. It was always a pleasure, and he was scrupulously fair and even-handed. His reserved, written judgments in particular are elegantly phrased and concise, in a style which the current judiciary would do well to emulate.

I need also to mention William's keen interest in Manx legal history. His knowledge of the history of the Isle of Man's fascinating constitutional development (one in which he personally played a crucial role) was profound and unrivalled.

He will also be remembered for achieving a historic increase in the Island's permanent judiciary when the post of Deputy Deemster was created in September 2002.

He continued in his retirement to take a lively interest in the welfare of the judiciary and was a welcome guest at swearings-in and other official occasions and dinners. Shortly after his retirement he was kind enough to act as chairman of the Simcocks Human Rights Act 2001 Conference and I know he was delighted to see that legislation coming into force, incorporating as it did the European Convention on Human Rights at last into our domestic law.

Quite how he managed to achieve all he did in the hours available to him remains to me a mystery. Perhaps it was because he retained what is sometimes called a "hinterland" of other interests, entirely different to law, including sailing and nature conservation. I know also that Felicity was an enormous support to him and her interest in all he did was always evident.

Despite the various honours bestowed upon him, William Cain was a very modest and self-effacing man – not for him any suggestion of vanity or self-publicity.

I am proud to have been His Honour's articled clerk and to have appeared before him in his role as Deemster. His achievements inspire us all on this bench to emulate them and to live up to his example.

He will be greatly missed.