

LORD RODGER OF EARLSFERRY

TRIBUTES FROM THE SUPREME COURT

The following tributes were paid in Court today (Tuesday 28 June) to Lord Rodger, who died on Sunday 26 June 2011. They were followed by oral tributes from the Lord Advocate, Frank Mulholland QC; and Gordon Jackson QC.

LORD PHILLIPS, PRESIDENT OF THE SUPREME COURT:

The Court is assembled this morning to pay tribute to Lord Rodger of Earlsferry, who, after a short illness, died tragically last Sunday at the age of 66. Where a man such as Alan Rodger dies prematurely, the sense of personal loss overwhelms the appreciation of the wider loss to society in being deprived of the talents of a man who has contributed so much in court, in his writing, in his lectures and in academia and who had still so much to contribute.

That personal loss is felt by every member of this Court, and by everyone who has worked with Lord Rodger in this building. He was appointed a Lord of Appeal in Ordinary in 2001 and from that moment his colleagues delighted in the enthusiasm with which he applied his intellect to the challenge posed by each case before him, his clarity of thought and insight that often revealed an aspect of the case that might have passed unperceived and the language, and indeed the accent, in which he forcibly expressed his views. That language is there for all who read his judgments to enjoy, and in some of them you will discern the humour with which he seasoned his views in discussion..

Lord Rodger's start in the law was as an academic. He graduated with an MA from Glasgow University and went on to take an LLB. From Glasgow he went to Oxford, where he read for his Ph D and was consecutively Dyke Junior Research Fellow at Balliol and a Fellow of New College. He retained some aspects of his early academic life. He loved to debate – his door was often open and as you passed you would see him locked in discussion with a judicial assistant or another member of the Court, though this might prove to be not about the morning's case but about a novel that he was enjoying. He

kept his love of and links with Oxford, where, in 2003, he was appointed visitor to St Hugh's College and, in 2008, High Steward, a particularly felicitous appointment in that he took over that office from Lord Bingham. At the end of last year he also succeeded Lord Bingham as visitor to Balliol College. He had honorary degrees at Glasgow, Aberdeen and Edinburgh Universities, and was Honorary Professor of Law at Glasgow School of Law. He was a fellow of the Royal Society of Edinburgh and of the British Academy.

His road to the Bench was swift and unconventional, in that he was not called to the Bar until 1974, when he was 30, took silk only 11 years after his call, but then went into Government service as a prosecutor.

He was Advocate Depute between 1985 and 1988, and was then appointed Solicitor General for Scotland. He was promoted to Lord Advocate and became a life peer in 1992. I was talking of him yesterday with Lord Strathclyde, the Leader of the House of Lords, who saw his Parliamentary performance at close quarters. He said that however complex the subject matter under debate in the House or in Committee all knew that Lord Rodger would be master of every detail.

Lord Rodger was appointed a Senator of the College of Justice, a judge of the High Court of Justiciary and Court of Session in 1995 and Lord Justice General and Lord President in 1996. In 2001 he replaced Lord Clyde as a Lord of Appeal in Ordinary. – on each occasion at a remarkably young age for the position.

In the House of Lords and in this Court Alan Rodger brought to bear the rigorous logic of the classicist. Where Parliament had used clear language he believed in giving effect to it. Sometimes this put him at odds with colleagues who adopted a more purposive approach, but his speeches and judgments were always compelling. If in doubt the temptation was to wait to see what Alan had to say and, when you did, your doubts were usually dispelled.

Through the jurisprudence of the Law Lords and this Court runs a rich vein which has its origin in Scotland. Lord Rodger has added to the wealth of that vein and his judgments will be cited by generations to come.

His most recent judgments show no dimming of intellect. The illness that struck him down so swiftly was a bolt out of the blue. We have had little time to come to terms with his loss and it will take time to do so. Our sympathy goes out to his family and to his many friends.

Lord Rodger and I were made Law Lords at about the same time, but I then left the House for other fields. Lord Hope, his fellow Scot, has sat with him throughout the last ten years, and I would like to invite him to add some comments of his own.

LORD HOPE, DEPUTY PRESIDENT OF THE SUPREME COURT:

As I look back over Lord Rodger's career, two things about him stand out above all the others.

The first was his abiding interest in Roman law. He had developed this at Oxford under Professor David Daube, the Regius Professor of Civil Law, whose influence on him was profound and whose portrait still hangs here in his room in this building. The Daube family recalls that of all his doctoral students Lord Rodger was one of a very small group to whom Professor Daube was very close and with whom, after his death, the Daube family always kept in touch. Alan Rodger was sent by Professor Daube to Germany to perfect his understanding of the subject and to learn German. These things he carried with him for the rest of his life. From time to time passages from Gaius, Justinian or the other civilian jurists would appear in his judgments. None of the rest of us knew that they existed – let alone where they were to be found. On one occasion he based his entire short judgment on a five word proposition from Ulpian. The Crown's argument, which was contrary to what Ulpian had declared, was, he said, untenable. On another, where his judgment ran to only three sentences, he formulated the proposition in his own words: "Argentoratum locutum, iudicium finitum" – Strasbourg has spoken, the case is closed. There was no more to be said. The quality and depth of his scholarship was widely admired and respected, especially in Germany and the Netherlands where he had many friends. Only last week a letter arrived from the Erasmus University at

Rotterdam telling him that he had been awarded an honorary doctorate at that University because of his outstanding services to the community of legal historians and his important contributions to the study of Roman law. Many other such honours would surely have followed had he lived.

The other thing that stands out about his career was his experience, derived from the seven years he spent as a Law Officer, of the processes of government and of statutory law making. As Lord Advocate he sat in the House of Lords and was closely involved in what went on there and in Whitehall as policies were framed and put into legislation by the Parliamentary draftsmen. This gave him a unique insight into some of the most acute problems that come before the court. One of the consequences of reforming the way judges are appointed is that is now virtually impossible for former Law Officers to find their way onto the bench. Even if it were possible, the Lord Advocate is no longer involved in the process of government at Westminster. These days are gone now, as the familiar song has it. But one cannot help regretting that this is so, and that the contribution that he could bring to our debates has gone for ever.

Lord Rodger was by training a Scots lawyer. But he never took anything at face value, and it was never his position that what Scots law says must always be right. He subjected it to the same searching criticism as any other system, sticking to those principles that he believed to be right and working out new solutions where he thought that things had gone wrong. The contribution that he made to this court's recent judgment in *Fraser*, which was the last case on which he sat, was entirely in character and should be more widely appreciated. He was unable to write his own judgment, as he would have wished. But he discussed my judgment with me in considerable detail while it was in draft. In his last message to me he said in terms that he agreed with my analysis, and then went on to explain in typically forthright language why he believed that we had no alternative but to decide the case ourselves and say that the conviction was to be aside.

Lastly I should like to say something about Lord Rodger's interest in young people. He had developed this while he was teaching Roman law as a junior resident fellow at Balliol, and it remained with him for the rest of his life. He gave up much of his spare time, and indeed much time that he could barely spare, to travelling about, speaking to law students and academics of all ages, giving lectures, attending seminars and encouraging them to

adopt the same restless enthusiasm for the subject as he had. Eleven judicial assistants passed through his hands in the House of Lords and then in this court. He spent many hours with them, talking about the law and teasing out the points of interest in the day's work that appealed to him. These sessions, always challenging, were lightened by his sense of fun and his humanity, and it gave him huge pleasure to watch them develop their careers after they resumed practice. None of them will forget the experience of working with him. Nor indeed, as members of this Court to which he gave so much, will we.