

Talk to the BMLA: 23 November 2016

It is a great privilege to be invited to talk to you tonight – and a little daunting in the presence of such company. It reminds me of a joke that Michael Mustill used to tell from time to time when speaking to a large audience. He would say that he would not repeat the opening words of a “President of a foreign friendly power” who started his speech to a heavily packed room with the words: “I am honoured to be speaking to such a *dense* audience tonight”. Reaganomics at its best!

Before I start I should thank Andrew Dinsmore and Stephen Ryan, barristers, for their help in searching out cases and materials for this talk. But all views are my own.

I have chosen to speak on Lord Mustill and Maritime Law – I like to think that he would have enjoyed the palindromic initials LMAML – for two main reasons. First, I had the pleasure of knowing Michael for many years from when I was a pupil in what was then 4 Essex Court when he encouraged me in my study and practice of maritime law; and secondly, because his influence on maritime law in particular and commercial law in general, as advocate, judge and scholar, has been very great. In my book, he stands alongside Scrutton LJ, Lord Atkin and Lord Goff of Chieveley as being foremost amongst the most influential of judges in those spheres in the 20th century. (I exclude Lord Bingham from this group only because he carried on into the 21st century). And of course, like all great judges, Michael Mustill’s distinction was not confined just to one area of the law. He brought equal qualities to the criminal law, personal injury law and administrative law – in which areas he wrote equally penetrating and memorable judgments which remain influential today.

Michael Mustill was born in 1931, the only son of Clement William and Marion Mustill and was proud to have been born a Yorkshireman. After school at Oundle and national service in the Royal Artillery, he went up to St John’s College Cambridge, which was also my college, where he read law. He was called to the bar by Gray’s Inn in 1955 and was a pupil of Michael Kerr in what was then 3 Essex Court, now 20 Essex Street. He started practice in No 3; No 4 (now Essex Court Chambers) did not then exist as a set of chambers. The commercial bar was then effectively confined to No 3, some practitioners in 7 King’s Bench Walk and one or two in No 1 Brick Court, where Lord Devlin had practiced. 2 Essex Court (now Quadrant Chambers) confined itself then to “wet” maritime work. Michael told me that work as a commercial junior in the late

1950s and early 1960s was very scarce and, for juniors, not well paid. Much of his work in the first seven years of his practice consisted of devilling for his old pupil master Michael Kerr, but Mustill got his breaks, such as being a second junior in the great scuttling case: *The Tropaoforos* - before Pearson J in 1960. (All six counsel in the case went to the bench; three of them, Roskill, Brandon and Mustill, to the House of Lords). In 1961 the Lord Chancellor forced No 3 to split and Michael moved to No 4 along with Michael Kerr QC, Robert McCrindle QC, Anthony Evans, Anthony Diamond, Mark Saville and Anthony Colman – what a distinguished bunch! By the time Michael took silk in 1968 his junior practice had become enormous. He, along with Anthony Lloyd, who had stayed in No 3, and Robert Goff, at 7KBW, were then the most sought after juniors. If you read Lloyd's law reports of the 1960s you will see that they were always appearing against one another, just as Scrutton and Hamilton had done in the 1900s.

When I first met Michael in 1973 he had been in silk for 5 years and was by then amongst the top commercial silks, along with Bob McCrindle, Anthony Lloyd and Robert Goff. I will come to a couple of his forensic battles a little later in this talk. It was inevitable that he would be appointed to the High Court bench and he duly was in June 1978, at the young age of 47. In those days he used to go on holiday to the département of the Ardèche – just west of the Rhône – and he stayed that summer at the house of his girl friend just outside the aptly named village Joyeuse. I was also staying nearby that summer. I recall him sitting at a table in his girlfriend's garden working on applications for leave to appeal in criminal cases, quite unnerved by the fact that next to him a large cannabis plant luxuriated.

During his time as High Court judge Michael became a highly respected and much loved Presider of the North Eastern Circuit. He was elevated to the Court of Appeal in 1984 and then to the House of Lords in 1992, where he took the title of Lord Mustill of Pateley Bridge in North Yorkshire, where his family had lived. In the same year he was admitted to the degree of Doctor of Laws by Cambridge University, principally for his original work on arbitration in his book, with Stewart Boyd QC, *Commercial Arbitration*. Michael retired from the House of Lords in 1997 and then practiced as an arbitrator, wrote and lectured. He was the Arthur Goodhardt Professor of Legal Science at the Cambridge Faculty of Laws in 2003/4. From 2011 he suffered from increasing ill-health and became less mobile. He died in April 2015, just short of his 84th birthday. I want to preface a brief analysis of some of Lord Mustill's most important decisions in the maritime law sphere by commenting on his

work as author and editor. Michael was invited to become the junior editor of *Scrutton on Charterparties and Bills of Lading* for the 17th edition, which was published in 1964, ie. when Michael's junior practice was reaching its peak. He joined two High Court Judges, Sir William McNair, who had been an editor since 1925, when the author was still very much alive, and Sir Alan Mocatta, who had joined the editorship in 1939. However, Michael's contribution was not just to be the tea-boy in the editorial team. If you read the text of the 17th edition, (I was given a copy by my pupil master, Nicholas Phillips, when he bought the 18th edition), it is obvious that Mustill had done much work on the text, particularly in the "Notes" which come after the major propositions of law and before the summaries of particular cases given to exemplify the propositions. I still go to the 17th edition as being the best starting point if I want to research a principle of general contract law or to check a proposition on shipping law. Michael remained an editor of *Scrutton* for the 18th edition in 1974, and the 19th which was published in 1984, but not the 20th, published in 1996. The heyday of litigation on charterparties and bills of lading was the 1970s until the mid 1990s. *Scrutton* was in everyday use in the Commercial Court and in arbitrations and Mustill's contribution to the evolution of the law on carriage of goods, as one of the editors of the foremost textbook, was considerable.

So, also, was his contribution as the senior editor of 16th edition of *Arnould on Marine Insurance*, which he edited together with Mr Jonathan Gilman QC. When I was Jonathan's pupil in 1973, the text of the 15th edition arrived in his room for noting up – all done in manuscript in those days. The text of the 15th edition had appeared in 1961, so it had had to be carefully revised and updated. The 16th edition, which did not appear till 1981 is full of learning. Michael, by then Mustill J, had particularly contributed to the sections on War Risks but his influence on the whole text is apparent.

Even more important than those texts on substantive maritime law, is "*the book*", as it was known to anyone involved in its production: what became Mustill and Boyd on *Commercial Arbitration*. It is not just a book on arbitration concerning maritime contracts, but we all know that the vast majority of charterparties and many bills of lading contain arbitration clauses and the vast majority of them provide for arbitration in London. In the days before the 1979 Arbitration Act, when appeals to the court from awards "in the form of a Special Case" on points of law were commonplace, arbitration awards were the chief well-spring for the development of maritime law. In a sense, the law of arbitration is thus part of maritime law's "procedural law". Michael begun work on "*the*

book” when a junior in 1966. Its gestation period was seven times greater than that of the African elephant – ie. a total of 15 years. By the time the first edition appeared, the Arbitration Act 1950 had been amended, there was a new Arbitration Act 1979, the Special Case had been abolished and Michael was on the bench.

The originality of the book was that, for the first time, it analysed in thorough and scholarly fashion the fundamental legal and philosophical principles of arbitration and then showed how those principles fitted into the framework of the new law. Which commercial lawyer, during the 1980s and 1990s, did not carry his *Mustill and Boyd* to any arbitration hearing at the Baltic or Kusels’ or to any Commercial Court case involving arbitration? The book became the leading textbook overnight. It’s high time there was a new edition!

Now for Mustill’s contribution to the substantive maritime law. I have concentrated on strictly maritime cases. It is difficult to choose particular cases, but I have picked 6 of them. They are from Michael’s time in the Commercial Court, the Court of Appeal and the House of Lords and I have tried to cover a range of maritime issues. The first is *The Mary Lou*, decided in 1981 by Mustill J. This was a “safe port” case and, despite being overruled by the House of Lords in *The Evia No 2* on one aspect, it remains good law on another, unless it is about to be overruled by the Supreme Court when it gives its decision in *The Ocean Victory*, heard last month.

The facts of *The Mary Lou* are these: the vessel was voyage chartered and the charter provided for the vessel to proceed to “*one or two safe berths one safe port*”. The charterers nominated New Orleans for a date when the recommended maximum draft for was 34 ft 6 ins. The approach channel from the open sea, (the Southwest Pass), was narrowing and shoaling at the seaward end. The vessel loaded to within the recommended drafts but on her way downstream she took the ground on the starboard quarter when going hard to port. She was aground for 9 days. The owners alleged that the charterers had nominated an “unsafe port”; the charterers alleged the vessel had been negligently navigated by the pilot, acting as the owner’s agent.

There are two important parts to Mustill J’s decision. In the first part, which was overruled by the House of Lords in *The Evia No 2*, he concluded that there could be a breach of the “safe port” warranty in a voyage charter at any time after the port’s nomination and up to the time the damage occurred, provided that the damage took place when the

vessel was going to, resting at or departing from the nominated port. Mustill had, in fact, written a learned article on this topic just before the *Mary Lou* came before him. In *The Evia No 2* the House of Lords held that the issue of breach only arose at nomination: it formulated the test as being: was the port then “prospectively safe”. That was a departure from the old law, although as Mustill J stated, it had been somewhat of an open question. Indeed it had been since the somewhat opaque decision of the Privy Council in the *Teutonia* in 1872, a case arising out of the Franco-Prussian war of 1870. Interestingly, it was Nicholas Phillips QC (Mustill’s former pupil) who argued to the successfully in the *Evia No 2* in the House of Lords against Mustill J’s conclusion on this first issue.

The second part of Mustill J’s decision concerned the definition of what was an “abnormal occurrence”. (It will be recalled that the classic, if negative, definition of a “safe port”, given by Sellers LJ in the *Eastern City* in 1955, was that a port will not be safe if at the relevant time the particular ship cannot reach it, use it and return from it without, “***in the absence of some unusual occurrence***”, being exposed to danger which cannot be avoided by good navigation and seamanship). In *The Mary Lou*, Mustill J had amplified that. He said that an “abnormal occurrence” was something which “*could be said, if the whole history of the port were regarded, to have been out of the ordinary*” and that if “*events of the type and magnitude in question are sufficiently regular or at least foreseeable to say that their occurrence is an attribute or characteristic of the port then they will not be an abnormal occurrence.*”

In the most recent case where this has been discussed in the courts, *The Ocean Victory*, Longmore LJ noted at §54

“Likewise, Mustill J in The Mary Lou [1981] 2 Ll Rep 272, at 278, column 2, in his description of what constitutes an abnormal occurrence, implicitly recognised the need to approach the identification of an abnormal occurrence realistically and having regard to whether the event had occurred sufficiently frequently so as to become a characteristic of the port”. Longmore LJ then went on to quote extensively from Mustill J’s judgment and approved it.

Thus Mustill J’s description remains good law 35 years later and I would be very surprised if the Supreme Court overruled it; but we shall have to see.

Next I want to consider another case decided by Mustill J, this time on marine insurance, because again it was an important and very influential decision: that of the *Miss Jay Jay*, decided shortly before Michael went to the Court of Appeal. The case concerned a claim on a time policy of marine insurance on a yacht, where the yacht, of new and unusual fibreglass construction, had literally fallen apart in the course of a voyage from Deauville to Hamble, in weather that was heavy but not unusually so. The policy covered loss by latent defects but there was an exclusion for any claim “for loss incurred *solely* in remedying a fault in design”. Mustill J held that the vessel was unseaworthy by reason of defects in her design and construction, which were latent, but the immediate cause of the loss was due to the fortuitous action of the winds and waves. That brought the loss within the terms of the standard cover of “perils of the seas”. It was immaterial that another cause, which was not the proximate one, would have excluded the loss from recovery if it had been the “sole” cause.

The decision was affirmed by the Court of Appeal and remains good law following the *Cendor Mopu* in the Supreme Court. The current edition of *Arnould* describes as a *locus classicus* Mustill J’s analysis of the question of causation, ie. when there is initial unseaworthiness but not such as to lead to inevitable loss or damage to the vessel in any weather conditions, but the vessel is lost or damaged due to the immediate effect of the fortuitous action of the seas and waves. *Miss Jay Jay* is also accepted as authority for the two propositions that where there are two proximate causes, one of which is an insured peril and one not, then the insured can recover; *per contra* if there are two proximate causes one of which is an insured peril and one an excluded peril, then he cannot.

Next, two decisions of Mustill LJ: *The Delphini* and *The Nogar Marin*. The issue in the first case, on appeal from Phillips J, was whether there was an arguable case that the plaintiffs had title to sue the shipowners for short delivery of petroleum products, so that the plaintiffs could have leave to serve proceedings out of the jurisdiction on the shipowners. The title to sue issue depended on whether it was arguable that property in the cargo had passed to the plaintiffs, who were holders of the bill of lading, “upon or by reason of” the endorsement of a bill of lading, within the terms of section 1 of the Bills of Lading Act 1855. It was accepted that the contract contained in or evidenced by the bill of lading was governed by English law. The judge had held that property had not passed under the terms of section 1 of the 1855 Act. That was upheld by the Court of Appeal. The interest in Mustill LJ’s judgment, given after a long excursus by Purchas LJ, lies in four aspects of it. First, he gave a

masterly summary of the law on the status of a bill of lading as a so-called document of title. Secondly, he summarised, in a few short paragraphs, the law on passing of property in CIF contracts. Thirdly, he analysed section 1 of the 1855 Act, which had caused trouble ever since the statute was passed because of the vagueness of the wording of section 1. In particular, courts had fretted over the width of the words “property in the goods [mentioned in the bill of lading] shall pass upon or by reason of such consignment or endorsement [of the bill of lading]. Mustill LJ analysed the cases and the text books, noted that there had long been two rival constructions of the statute, one narrow and one broad and came to a conclusion that the narrower construction was correct. Lastly, Mustill LJ recognised that the drafting of the 1855 Act gave rise to problems on title to sue and that the best solution was a reform of the Act, a task which the Law Commission had then in hand, under the auspices of Jack Beatson, then a Law Commissioner. Needless to say, Michael had a hand in the report and proposed Bill. The result was the Carriage of Goods by Sea Act 1992, which is a vast improvement on the 1855 Act. However, as I found out when I was the judge in a case called *The Ythan*, the new Act produces headaches of its own!

The issue in the *Nogar Marin* was whether the shipowners could recover from voyage charterers sums that they had had to pay out to cargo receivers for delivering a cargo of iron coils which were rusty, in circumstances where the cargo had not been in good order and condition when shipped but the charterer’s agent had submitted both clean mates’ receipts and bills of lading for signature respectively by the master and his agent. The argument revolved around the principles of when the shipowner could claim a right of indemnity from the charterer. The case is the leading authority on when an implied right of indemnity arises under a charterparty when bills of lading are presented to the master or his agent for signature and the goods are not in fact in the condition stated in the bill of lading. Mustill LJ gave the judgment of the court (which consisted also of Lord Donaldson MR and Nicholls LJ). He identified three issues of law: (i) whether any prima facie rights (either as to damages or an indemnity) arose through delivery of the mates’ receipts by the charterers to the master for signature (not the usual course as Mustill LJ noted – it is usually the first mate that signs the mates’ receipts, hence their name); (ii) whether there any such rights upon the bills of lading being presented by the charterers to the owners’ agent for signature; and (iii) whether either right was affected by the finding of fact by the arbitrator that the master was negligent in signing the mates’ receipts without qualification even though the coils were rusty. Mustill LJ regarded these as novel points, but he undertook a masterful analysis

of the extensive case law on when rights of indemnity arose in the general law and when they arose in the context of carriage of goods under bills of lading where the ship has been either voyage chartered or time chartered. His conclusion was that in that case there was no right of indemnity because, as was well known in the shipping trade, it was the master's duty and the master had had the opportunity to see whether the goods were defective at the time the mates' receipts were tendered, but negligently he had not inspected the goods and so had not claused the mates' receipts nor given instructions to his agent to clause the bills of lading.

The two decisions on maritime law of **Lord Mustill** that I want to examine are *The Gregos* and *The Nagasaki Spirit*. The first is a "dry" shipping case, in every sense, and the second a "wet" one.

The issue in the *Gregos* was: what are the legal consequences of a time charterer giving an order for a last voyage which was legitimate when given, but through circumstances beyond the charterer's control becomes illegitimate in the sense that, if the order was then obeyed by the master, the vessel would be redelivered beyond the last day for delivery according to the time charter terms. Lord Mustill gave the leading opinion. He took the opportunity to analyse the nature of the charterer's obligation to give orders for the employment of the vessel, which he characterised as part of the allocation of risk between the parties under a time charter; the date at which a court had to consider whether a charterer's order as to the vessel's employment was within the scope of the time charter; whether the obligation to deliver on time was a "condition" of the time charter; the effect of giving an order that was or became something that was outside the scope of the time charter and whether it could be a repudiatory breach; and, lastly, the question of how damages for breach were to be assessed.

The opinion is a tour de force because Mustill considers each of the issues from first principles, noting that although there were many cases that tangentially dealt with the topics, there were no cases that bound the House of Lords. When you read the report you can visualise Michael Mustill pacing up and down - he rarely wrote anything sitting down - testing the arguments to himself, working out where they led and worrying about his conclusions before finally being satisfied and then setting them down.

In short, Lord Mustill concluded, first, that the relevant date for seeing whether the order was "within the service promised" was the time when the performance of the order fell due. Secondly, he accepted the

concession by the charterers that an illegitimate order as to employment on a last voyage was a breach of contract. Thirdly, the duty to make timely delivery was an “innominate obligation” of the charterers. However, fourthly, if an order was invalid at the time performance was due and if the charterers persisted in requiring that invalid order to be performed by the shipowners, then that showed that they did not intend to perform their contractual obligations under the charter, viz. to redeliver the vessel on time. That constituted an anticipatory breach of contract which entitled the owners to treat the contract as at an end. That was what the owners had done in this case.

There is an interesting postscript on damages. The market was a rising one and the owners had fixed a further charter upon redelivery in Europe at an advantageous rate plus a bonus. When the dispute arose the parties reached a without prejudice agreement so that the last voyage was performed and the charterers agreed that if they owners were held entitled to treat the charterers’ insistence on performing the last voyage as repudiatory, then they would pay the current increase in hire rates over the chartered rate plus a notional ballast bonus. As Lord Mustill pointed out, if there had been no WP agreement, the owners would not have performed the last voyage, would have got the new, higher rate and it is difficult to see they could have recovered any damages at all; they would have made a profit. Yet the arbitrator, Mr Mark Hamsher, had awarded a “large sum”. Lord Mustill analysed this as the arbitrator enforcing the terms of the WP agreement and remunerating the owners for a voyage from which, as a consequence of the charterers’ act, they would otherwise have been free. That was the free market at work.

The question of what damages were to be awarded in cases of anticipatory breach of contract was one that had clearly fascinated Mustill since he had been Michael Kerr’s pupil at the time the *Citati* case started its switch back ride from arbitrator to court of appeal and back. (I recall actually describing the case to Brandon J as riding a switch back, and he retorted “yes and I was on the switch back”!). Lord Mustill wrote an article about the topic of anticipatory breach and damages for the LQR in 2008, based on a subsequent decision of the House of Lords in *The Golden Victory*. That case had divided the House and, as Mustill noted, in their lordships’ various opinions there was a “conspicuous absence of the emollient tone in which such differences are usually expressed”.

The last case I wish to consider is *The Nagasaki Spirit*, where the speeches were handed down in February 1997, the year Michael retired from judicial work in the House of Lords. On 19 September 1992, two

ships, the *Nagasaki Spirit*, a tanker part laden with crude oil, and the *Ocean Blessing*, collided in the northern part of the Malacca Straits. Much of the oil cargo was spilled into the sea and caught fire. Both ships were engulfed the fire and all but two of the crew of both ships perished in the flames. The day after the collision, the well known salvors, Semco Salvage, agreed to salve *Nagasaki Spirit* on the terms of Lloyds Standard Form of Salvage Contract, 1990 edition, which I will call LSF 90. The salvage work was successful; the remainder of her cargo was transhipped and after being towed to an anchorage off Indonesia she was eventually redelivered to her owners alongside the Sembawang shipyard quay on 19 December 1992. The salvors' claim for salvage remuneration went to the well known Admiralty silk and Lloyd's salvage arbitrator Dick Stone QC, then on appeal to the distinguished Appeal Arbitrator, J Franklin Willmer QC. Unusually, the case did not stop there but went on appeal to the Admiralty Judge, Clarke J, now Lord Clarke of Stone cum Ebony; thence to the Court of Appeal before Staughton, Swinton Thomas and Evans LJJ and thence to the House of Lords. Very few salvage cases get to the House of Lords.

The issue on the appeal was the meaning of the word "expenses" in Article 14.3 of the London International Convention on Salvage 1989. That convention had ended the old regime of "no cure-no pay" and was intended to provide adequate incentives to salvors in order to be able to keep themselves ready to protect the environment as well as save ships in distress. The Convention was given the force of law in the UK by section 225 of the Merchant Shipping Act 1995 but its terms had already been incorporated by reference into the LSF 90. In short, the argument of the shipowners was that "expenses" in Article 14.3 meant a fair rate that was comprehensive of indirect or overhead expenses, but also the additional costs of having resources instantly available, whereas the salvors argued that, under Article 14.3, "expenses" also included an element which "acts as an incentive to the salvor", without it being a salvage reward. The issue was of great practical importance internationally, not only to professional salvors, whose outlay on modern tugs and equipment is huge and who literally sit and wait for casualties to occur, but also to marine insurers, who will usually have to foot the bill for the salvage remuneration agreed or awarded by the Lloyd's arbitrator.

Lord Mustill begins his speech with a beautifully concise history of salvage. He highlighted the most pressing modern problem and greatest public concern relating to casualties at sea: how to deal with possible environmental disasters when there was an oil spillage at sea, which

often occurred near coast lines. The aim must be to ensure that professional salvors would be available to deal efficiently with these environmental hazards. Against that background Lord Mustill examined the Convention and its genesis and concluded that the narrower meaning must be given to Article 14.3. Its aim was, he said, to enable the salvor to recover his indirect and standing costs, but not to the extent of creating a new form of “environmental salvage” for which there should be a profit element. The care with which he investigates each element of the argument is evident as is his learning. Lord Mustill’s speech therefore succeeded in clarifying the precise basis upon which salvors could recover for environmental salvage. It also contributed to the introduction, by Lloyd’s, in 1999, of the SCOPIC clause, which is a tariff to calculate the Contractor’s special compensation under Article 14 with an uplift of 25%, although there is a counterbalancing reduction in the standard salvage remuneration received under Article 13 of the Convention.

A talk on Lord Mustill’s contribution to maritime law would not be complete without mentioning also his advocacy. I saw him in action on a few occasions when I was a pupil and when I was starting off at the bar, notably when he was arguing *The Albazero* in front of Brandon J and then in the Court of Appeal. He lost there but was triumphant in the House of Lords. He was not a showy advocate, but, like Scrutton, had a complete command of both the facts and the law and always gained the utmost respect from the court – even from Brandon J. A glance at the reports of his argument in such important cases as *Margarine Union v Cambay Prince Steamship* – on title to sue; *The Mihalis Angelos* – on anticipatory breach of contract, and *The Eurysthenes* – on the correct construction of section 39(5) of the Marine Insurance Act (sending a ship to sea in an unseaworthy state in the context of a time policy), will show you not only his complete grasp of principle but also his legal scholarship and depth of knowledge. In the *Margarine Union case* before Roskill J, Mustill began his survey of the cases in the 17th century. This led the judge to remark, in his *soi-disant* extempore judgment, (I think more in admiration than complaint): “I propose to start not in the seventeenth century as did Mr Mustill, nor even in the eighteenth, but in the nineteenth with the decision of the House of Lords in *Simpson v Thompson*”.

Of course Michael won: no title to sue without property in the goods; risk is not enough. And, although his opponent, Tony Lloyd, revived and approved his own argument when a judge- in his decision in *The Irene’s Success* in 1981 - Mustill was vindicated when the House of Lords approved the *Cambay Prince case* in the *Aliakmon* in 1986.

Lord Neuberger, the current President of the Supreme Court, summed up Michael Mustill's qualities in an obituary notice:

Lord Mustill combined compassion, considerateness, breadth of vision and wit with modesty and a brilliance unforgettable by anyone who appeared before him. He was an outstanding Law Lord whose service to the profession and society was marked by an abiding determination to ensure that the law was both clear and fair in all areas which he addressed with such distinction, and whose contributions in fields as diverse as commercial and criminal law were particularly notable”.

All true, but Michael would have been embarrassed by the effusion. He retired from the House of Lords in 1997 at what I now regard as the young age of 67. The reason for his retirement was not, as was muttered by some at the time, that he was fed up with it and wanted to earn more money as an arbitrator, but because he was ill. He had a life threatening disease, but, luckily, surgery and treatment righted him.

He never lost his sense of humour and mischief and an ability to be self-deprecating – often combining all three together. After treatment and before he retired he found himself in the lift to the law lords' quarters in the House of Lords, together with Robert Goff and Lennie Hoffmann, then the junior boy on the corridor. Michael broke the silence by remarking: “I've been made a semi-colon”. Robert Goff reposted: “better than a comma”. To which Michael retorted: “I thought it was going to be a full stop”!

I'm glad it wasn't.