

LORD MACKENZIE-STUART OF DEAN
LLB, LL.D

Alexander John Mackenzie-Stuart, Judge; born Aberdeen 18 November 1924; Advocate (Scotland) 1951; Queen's Counsel (Scotland) 1963; Keeper of the Advocates' Library 1970-72; Sheriff Principal of Aberdeen, Kincardine and Banff 1971-72; Senator of the College of Justice 1972; Judge of the Court of Justice of the European Communities 1973-88; President of the Court 1984-88; created Baron Mackenzie-Stuart of Dean 1988; married Anne Millar (four daughters); died Edinburgh 1 April 2000.

Jack Mackenzie Stuart was a successful advocate and judge in Scotland before becoming the first judge from the UK, and later President, of the European Court of Justice in Luxembourg.

His father was a KC and Professor of Scots Law at Aberdeen. Jack married a fellow law graduate, herself the daughter of a Writer to the Signet. So when his youngest daughter told him she wanted to study law she expected a more enthusiastic reply than "See you have plenty of outside interests".

His own range of interests is illustrated by his two books. The first, *The European Communities and the Rule of Law* (1977), is an account of the work of the European Court, enlivened with quotations from *The Mikado* and A.P. Herbert and observations based on his early career as an engineer ("Personal conviction is a chancy fuel for the judicial engine. It can too easily cause the bearings to run hot and seize up"). Judge Pierre Pescatore has described it as a gem.

The second, *A French King at Holyrood* (1995), is a diverting but scholarly account of the Scottish sojourns of Louis XVI's younger brother, later King Charles X, whom Talleyrand was glad to see as far away as possible from London. The theme reflects Jack's love affair with France, while the provenance of some of the illustrations, "Private collection, Edinburgh", hides his skill as a collector of unattributed drawings of which, with a fair measure of success, he set out to identify the artists.

He was educated at Fettes College, Edinburgh, where his daughter in due course became the first girl pupil. In 1942, he joined the Royal Engineers and was sent to Sidney Sussex College, Cambridge, on the War Office Engineering Course, followed by service, mainly building bridges, in Northern Europe. In his speech on retirement from the Court of Justice in 1988, he spoke of the indelible effect at an impressionable age of seeing the ashes of the Ruhr.

After a staff post in Burma and a spell dismantling mines on the Northumbrian coast, he returned to Cambridge where he took first class honours in Part II of the Law Tripos, followed by an LL.B. with distinction at Edinburgh. He was called to the Scots bar in 1951 and quickly acquired a substantial practice, taking silk in 1963. In those days there was no specialisation and he was equally at home in the realms of trusts (on which his father had written the standard textbook), taxation and estate duty (as Counsel to the Revenue) and coal-mining accidents.

He worked very hard and had the highest professional standards, but for him, as for most of us, the life of the Bar was meaningless if it was not also fun. Consultations were held after court in his study at home and, as the clients were shown out, his junior would be asked to stay behind "to discuss that case we have next week". As the door closed, Anne and one or more of the daughters would appear from the kitchen, and we relaxed with a drink by the fire to discuss anything but next week's case. It was a warm and lively family atmosphere and a succession of pupils, juniors, legal assistants, secretaries and other helpers in Scotland and Luxembourg were delighted to share it.

In due course, he was appointed Sheriff of Aberdeen (a part-time appointment and a stepping-stone to the Supreme Court Bench) and he took great pride in this connection with his own birthplace. But it was not long before he was appointed a Senator of the College of Justice with the judicial title of Lord Mackenzie-Stuart. This was in turn a stepping-stone to his appointment, with effect from January 1973, as a Judge of the European Court.

The Prime Minister and Foreign Secretary agreed that one of the posts in Luxembourg - Judge or Advocate General - would go to a Scots lawyer. Mackenzie-Stuart's taste for European law had been whetted by his wife who studied for an LL.M. with Professor John Mitchell, and he was asked at an early stage whether he would like to be Advocate General. The judgeship was meanwhile offered to bigger beasts in the London jungle. The story goes that when one of them declined, Lord Chancellor Hailsham said: "Quite right, my boy; Europe's for hols". Much to his surprise, Mackenzie-Stuart was offered the post. If he was not the first choice, his interest in Europe was certainly more than for "hols", much as he enjoyed them, then and later.

The Mackenzie-Stuarts moved to Luxembourg and set up home in a farming village where they quickly became part of its life. They worked hard to build up the spirit of the embryo British community and Anne became a driving force in the European School.

The Court of Justice was dominated by the formidable French President, Robert Lecourt, who regarded the new members (British, Irish and Danes) as troublesome cuckoos in the nest. Together with Jean-Pierre Warner, the British Advocate General, Mackenzie-Stuart worked quietly, but effectively, to overcome suspicions and engineer the synchomesh of potentially incompatible legal systems which has continued to work ever since.

In reality, the work of the European Court touches very little on the historical differences between the common law and the civil law, and much more on the modern problems of ensuring cross-frontier freedom to trade and to work, market

regulation and fair competition. The national legal systems cannot solve these problems by themselves, but the Court's judgments must be acceptable and workable in each of them. It was Mackenzie-Stuart's good-humoured readiness, not simply to accept that other judges saw things from a different point of view, but to learn why they did so, that earned him the trust and respect of his colleagues and led to his election as President of the Court - an office he neither sought nor wanted.

He took over the Presidency at a difficult time. By failing to nominate new judges, some governments were holding up the work of the Court whose workload was growing exponentially. Greece had recently joined, followed by Spain and Portugal, taking the number of official languages from six to nine. The Court building ("the rusty Palais" opened in 1972) was already too small and some of the translators were working in prefabricated huts. Through quiet persistence with judges, staff, Community institutions and national governments, the President ensured that the work got done, a new building was planned and the foundations were laid for a new court structure, involving the creation of a Court of First Instance.

Sustained by a warm family life and a deep understanding of other people and their problems, Jack Mackenzie-Stuart leaves an abiding memory in Luxembourg, as in Scotland, of a generous, thoughtful and sensitive man. In the words of one Court official, his weakness was an inability to think ill of anyone.

DAVID EDWARD