

Mr Justice McCardie
(1869-1933)

Mr Justice McCardie (1869-1933):

*Rebel, Reformer,
and Rogue Judge*

By

Antony Lentin

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To Louis Blom-Cooper



Mr Justice McCardie, 1919, Ernest Townsend

‘Beneath the robes and the wig there always beats the heart of a man.’
—Mr Justice McCardie

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* 'Rebels or Reformers? The case of Sir Henry McCardie'. Podcast:
<http://sms.cam.ac.uk/media/1667263>

Book, is applicable to McCardie, for evidence is lacking, the Note Book yields quotations happily appropriate to his career. Finally, to Mr Christopher McCall, QC and Sir Louis Blom-Cooper, QC, for advice and encouragement, and to Dr Philip Webb of the Cities Centre, University of Toronto, for close criticism and comment and felicitous suggestions.

Cambridge, December 2016

PREFACE

A FORGOTTEN BUST, A JUDGE DIMLY RECALLED



Figure 1: The Hon Mr Justice McCcardie, 1932, *aet.* 63 by Marguerite Milward.
Bronze head on marble stand. The Queen's Room, The Middle Temple.

‘How fleeting is popularity.’

—Edith How-Martyn to Margaret Sanger (feminists and pioneers of birth control), 1 May 1933, on the death of Mr Justice McCcardie.

‘We know so little about who the judges were.’

—Robert Stevens, in *The Human Face of Law. Essays in Honour of Donald Harris*, 1997.

‘And so “McCardie” is dead’. It is hard today to conjure up the resonance of that announcement in the *Law Journal* of 29 April 1933 or of its valediction a week later to the departed ‘Crusader on the Bench’. Yet ‘McCardie’ was once a household word, ‘the most discussed personality of the legal profession’, ‘this famous figure in our English life’, ‘a distinguished and well-beloved judge’. A female inmate in Holloway Prison, sent down for eight years, sighed: ‘If Justice McCardie had tried me, he would have understood’. Earlier, a young woman enthused: ‘Good luck, Mr Justice McCardie! I wish there were a few more like you’, while a young man echoed: ‘Mr Justice McCardie should rank as one of the heroes of the modern generation’. An obituarist wrote that ‘no other British judge of recent times has so caught the imagination of a large majority of his fellow-citizens’.¹

Almost ninety years ago, in an address in Middle Temple Hall, McCardie described ‘this noble building’ as ‘a shrine of illustrious memories’.² In his own case commemoration has turned out strangely. In the Queen’s Room, where the Benchers foregather to transact the business of the Inn, McCardie’s bronze bust has stared out from the mantelpiece through sightless eyes for more than sixty years. Unaccountably it bears no plaque or indication of its subject. The generalized ‘senatorial head’³ is not instantly recognizable, and to many in the long succession of Benchers who have spared it a passing glance its identity remains unknown.* Nor is there any mention of McCardie in the recently published *History of the Middle Temple*.⁴ *Sic transit*.

The transience of fame when a judge quits the Bench seems to be a peculiarity of English judicial history. Once he fades from the scene, how

¹ *Law Journal*, 6 May 1933, *Daily Express*, 12 February 1932, *Liverpool Echo*, 27 April 1933, *Morning Post*, 23 June 1924, *Daily Telegraph*, May 1933, *Yorkshire Evening Post*, 4 December 1931, *Leeds Mercury*, 22 December 1931, *Sydney Morning Herald*, 29 April 1933.

² *The Law, The Advocate, and the Judge. A Reading delivered before the Honourable Society of the Middle Temple, May 19th 1927*, The Solicitors’ Law Stationery Society, pp.9, 12.

³ Sybille Bedford, *Jigsaw. An Unsentimental Education*, Eland Publishing, 2005 (1989) p.161.

* Even after its identity was recently re-established, neither of two Benchers, one a Lord Justice of Appeal, the other the Master Treasurer of the Inn, was able to name its subject.

⁴ *History of the Middle Temple*, (ed). Richard O’Havery, Hart Publishing, Oxford, 2011.

often he becomes, other than for the legal connoisseur, little more than a name. Some judges do, for a time, leave their mark on the public mind. In the latter half of the Twentieth century, Lord Denning (1899-1999) was England's best known and most popular judge, an inspiration to generations of law students. But his jurisprudence has fallen into disfavour.⁵

If the rays of a Denning have dimmed so quickly, it is unsurprising that oblivion clouds the memory of a judge of a remoter era. Yet McCardie, like Denning, was once a living legend, acknowledged by a Lord Chancellor as 'the greatest master of case-law of our time',⁶ and by a fellow lawyer as 'a great and good man', whose *dicta* were said to be 'quoted almost like biblical texts'.⁷ He was compared to 'the great Lord Mansfield'⁸ and even hailed as 'a modern Solomon'.⁹

Others, however, remembered him not as a 'crusader' but as a judicial infidel, a rogue judge 'running amok', 'a bull in a china shop',¹⁰ whose pronouncements

often angered his 'brothers' on the Bench . . . brought the ire of the Church down on his head . . . caused the Prime Minister . . . to administer a rebuke in the House of Commons. . . aroused a storm in two hemispheres and seriously embarrassed the British Government.¹¹

'Mr Justice McCardie', the *Spectator* declared, 'must have easily out-distanced any other Judge on the Bench in the attainment of headlines in the popular Press'.¹² The *Law Quarterly Review* described him as 'one of the most interesting men in the history of the English Bench',¹³ a view

⁵ Charles Stephens, *The Jurisprudence of Lord Denning. A Study in Legal History. In Three Volumes*, Cambridge Scholars Publishing, Newcastle-upon-Tyne, 2009; Sir Louis Blom-Cooper, QC., 'Lord Denning's Legacy: a Judicial Misfit?' in *Power of Persuasion. Essays by a Very Public Lawyer*, Hart Publishing, Oxford, 2015, pp.334-46

⁶ J.H. Morgan, letter to *The Times*, 29 April 1933.

⁷ E.S.P. Haynes, *The Lawyer. A Conversation Piece. Selected from the Lawyer's Notebook and other writings*, Eyre & Spottiswoode, 1951, pp. 204, 205.

⁸ *South African Law Times*, October 1933.

⁹ *Fortnightly Law Journal*, 1 November 1933.

¹⁰ *Sunday Express*, 6 December 1931.

¹¹ *Sydney Morning Herald*, 14 April 1934.

¹² *Spectator*, 13 May 1932.

¹³ *Law Quarterly Review*, 50, July 1934, p.441.

repeated seventy years later in the *Law Society Gazette*, which called him ‘one of the more interesting of the pre-Second World War judges’.¹⁴ But why he was interesting is today largely unknown.

One reason for the ephemerality of judicial reputations in England is the relative dearth of judicial biography. While the great names in American jurisprudence, at least among the Justices of the Supreme Court, stand out as prominently as the presidential profiles on Mount Rushmore, some of the great English judges are little known. The result, as Lord Roskill reflected thirty years ago, is that ‘lawyers, whether judges or not, are usually wholly forgotten when they retire or die’.¹⁵

In this Lord Roskill echoes Horace, a poet for whom McCardie had a particular affinity:

*omnes illacrimabiles
urgentur ignotique longa
nocte, carent quia vate sacro.*¹⁶

McCardie wrote of the *Odes* that ‘ancient Rome has perished, but the verses of Horace remain’ to belie the poet’s reflection that we are but dust and a shade—*pulvis et umbra sumus*. There is evidence that McCardie would have liked to write his own story and intended to do so, that he pondered his achievement and reputation and how far they would withstand the wreck of time.¹⁷ In the centenary of McCardie’s appointment to the Bench it may be apt to retrace the facts and delineate the course of his career, and venture to emulate Pygmalion by attempting to bring to life across the mists of time something of the man behind the unremembered bust in the Middle Temple.

¹⁴ *Law Society Gazette*, 18 December 2003.

¹⁵ Lord Roskill, ‘Law Lords, Reactionaries or Reformers’, *Current Legal Problems*, 1984, p.248.

¹⁶ ‘They all languish unmourned, consigned to oblivion, because they have no bard to tell their tale.’ *Odes*, IV, 9.

¹⁷ McCardie, toast ‘to the immortal memory of Horace’, presidential address at the inaugural dinner of the Horatian Society, in G. Pollock, *Mr Justice McCardie. A Biography*, John Lane, The Bodley Head, 1934, p.7. Foreword to *The Odes of Horace. A Selection*. Tr. L. Chalmers-Hunt, Simpkin, Marshall, Hamilton, 1925, p.vii. Foreword to Fred E. Weatherley, *Piano and Gown*, G.P. Putnam’s Sons, 1926, p.ii. *Daily Express*, 12 February 1932.

Note

McCardie was prone to underlining in his correspondence. In citing his letters, a single underlining is represented by *italics*, a double or triple underlining by *italics underscored* once (thus) or twice respectively.

INTRODUCTION

IN SEARCH OF MCCARDIE

‘In theory, the judge represents simply the majesty and impartiality of the law whose instrument he is. In practice, because of the imprecision of law and the imperfection of man, the judge enjoys a considerable area of quite personal power which he may or may not exercise wisely.’

—Iris Murdoch, *The Nice and the Good*, 1977

‘Truth, truth, truth: open the shutters and let in the full light of truth.’

—Mr Justice McCardie, 1927

Lord Sumner and Mr Justice McCardie—McCardie’s controversial reputation and high public profile—a ‘judicial misfit’?—conflicting verdicts—his biographers

This book grew out of an entry on Mr Justice McCardie, one of ten ‘lives in the law’ which I was asked to write for *The Oxford Dictionary of National Biography*. The experience brought home to me what Lord Bingham called ‘the richness, the diversity and the intrinsic interest’¹ of the English judges, often concealed beneath the anonymity of the wig. An entry on Lord Sumner was also the seed of a biography,* to which this forms a companion though contrasting volume. Both judges were known for the cultivation of that rare symmetry of law and style known as *elegantia iuris*. Other than Sumner, it was claimed in 1926, ‘there is only one judge whose judgments show any sign of literary care or ability. That is Mr Justice McCardie’.²

Judge Henry Cecil Leon, better known as the author Henry Cecil, once drew up a First and Second Eleven of judges, in which he assigned Sumner to the First Eleven, McCardie to the Second.³ The assessment seems fair; but to vary the cricketing metaphor and turn it into a question, if Sumner was an Olympian, was McCardie at least among the Titans? I shared with Sumner’s admirers their veneration for his great legal mind

* A. Lentin, *The Last Political Law Lord: Lord Sumner (1859-1934)*, Newcastle-upon-Tyne, 2008.

and the adamantine judgments that flowed from it, but was less taken with what I read of his temper, which he was said to keep ‘well under control, but only in the sense in which a lion tamer keeps his animals under control’.⁴

In this respect at least, McCardie was Sumner’s superior: patient, good-tempered, good-humoured and affable, by general consent the most considerate, approachable and likeable of judges: altogether ‘a very human Judge’.⁵ How was it, then, that a judge whose rulings combined exceptional learning with great powers of exposition and a palpable devotion to justice, failed to reach the highest peaks of his profession? It was no disgrace to remain a High Court judge, but qualified observers had looked to his inevitable rise to the Court of Appeal and House of Lords.

McCardie was a judge during the turbulent years in and after the Great War, the twenties and early thirties of the last century—‘what change, tumult, war and revolution’,⁶ he said—years of rapid social transformation and shifting attitudes. Impeccably restrained as a barrister, conventional in all save exceptional ability and diligence, he caused surprise from the moment of his promotion to the Bench by proving a controversial and, to the disquiet of many in the judicial hierarchy, an increasingly unconventional judge, and across his sixteen years on the Bench his traits became ever more pronounced.

Much subject to criticism was McCardie’s iconoclasm, his insistence that law must move with the times, his denunciation of outdated precedents, his undisguised repugnance at some of the laws which fell to him to administer, and his growing reluctance to accept the purely declaratory role of the judge as what Blackstone called the ‘oracle’ of the law, whose function is simply to enunciate what is already implicit in it. McCardie was a pioneer of what is now known as ‘judicial activism’ or ‘judicial creativity’. He thought deeply about law. He strove not merely to make the law comply with the precedents but beyond that to make it answer the needs of the day.

But ‘judicial creativity’ was frowned on. The very concept was thought unconstitutional and heretical. Lawmaking was the function of Parliament. If it was to be attempted at all outside Parliament, that was the preserve of the House of Lords in its judicial capacity, though the law lords themselves normally concealed the nature of their activities under cover of the declaratory principle. In the United States, the concept of ‘the judge as

a legislator' and 'the well-established doctrine of lawmaking by judicial decision'* had been familiar since at least 1921. In England it was another half-century before Lord Reid revealed the open secret that judge-made law is what it says it is.⁷

Critics also condemned what they saw as McCardie's all-too-ready comments on and off the Bench that brought 'the bachelor judge' to constant public view in the newspapers and made his sayings the subject of comment and editorials. It was not just the frequent pronouncements by 'the bachelor judge' on women's fashions that caused brows to furrow and jaws to set, but his open attacks on the state of the law and his insistent calls for reform. Whatever he may think, a judge is not supposed to say that the law is an ass.

McCardie's observations ranged from England's mid-Victorian divorce laws, which he deplored, to abortion, contraception and eugenics, causes which he championed with scant regard to the sensibilities of those who took a different view. The Roman Catholic journal, the *Tablet*, complained of 'Mr Justice McCardie's culpable and scandalous remarks on abortion'.⁸ McCardie's utterances were bound to offend one or other section of public opinion and opinion on the Bench, and, trumpeted forth by the press, they did not fail to do so. They were denounced as 'judicial aberrations'.⁹

To McCardie they were not aberrations at all, but part and parcel of the judicial function. 'Rebel judge who feared nobody',¹⁰ –such was his accolade in the *Daily Express*, which also acclaimed him as 'St George in a Wig', a champion of women's rights: 'He turns his bench into a pulpit for Woman's cause'.¹¹ His pronouncements ruffled judicial feathers in a profession traditionally conservative. Feeling on the Bench was that judges are not there to philosophize, least of all in the tabloid press. It was with McCardie in mind that Sir Frank (Lord Justice) MacKinnon pointedly observed: 'He is the best judge whose name is known to the fewest readers of the *Daily Mail*'.¹² *

* Benjamin Cardozo, *The Nature of the Judicial Process*, 1921, p. 94; Roscoe Pound, *The Spirit of the Common Law*, 1921, p. 181.

* Of Mr Justice Talbot, who had been McCardie's rival for appointment to the Bench in 1916, MacKinnon wrote in the *Dictionary of National Biography*: 'His name was unknown to the readers of the cheap newspapers'. Again, the unnamed target was McCardie.

The ‘Crusader on the Bench’ entered the lists too often and too conspicuously for his critics’ comfort. ‘In his desire to combat social misfortunes’, said the *Law Journal*, ‘he out-stepped the customary limits of judicial pronouncement’.¹³ For many of his colleagues McCardie became a rogue judge or ‘problem judge’¹⁴ in the words of his contemporary, Serjeant Sullivan, a ‘judicial maverick’ or ‘judicial misfit’.*

Controversy surrounded McCardie, the *Manchester Guardian* observed, ‘as electricity is attracted to a lightning conductor’.¹⁵ He clashed successively with Lord Chancellors Loreburn, Haldane and Sankey. Lord Chancellor Buckmaster, who appointed him to the Bench, came to regret that he had ever done so. McCardie’s removal from the Bench was demanded in Parliament, at one time by a Socialist, at another by a Conservative MP.

As a Cambridge undergraduate, Noel Annan heard the law lecturer (later Professor) Charles Hamson denounce ‘the feeble Mr. Justice McCardie and praise Lord Justice Scrutton’.¹⁶ The occasion was a notorious round of judicial fisticuffs in 1932 arising from a highly publicized case on women’s rights, *Place v Searle*. By contrast, Professor Hanbury, Vinerian Professor of Law at Oxford, compared McCardie with the United States Supreme Court Justice Louis Brandeis in their conviction that judicial decision-making should be guided not only by precedent but also by its relevance to changing social realities.¹⁷

Place v Searle was not the first time that McCardie had taken up the cudgels. His sixteen-year long career in the High Court was punctuated by some very public collisions. His summing-up in the Amritsar libel case, *O’Dwyer v. Nair*, in 1924, provoked outrage in India and brought down on his head a rebuke in Parliament from the Prime Minister, Ramsay MacDonald. The National Government’s decision to reduce the judges’ salaries during the Great Depression again brought McCardie to the fore.

Much as he irritated his fellow judges, brought up on conventions of conformity and decorum, McCardie bridged the generation-gap between pre-war and post-war. To aspiring young barristers of his day, men and

* I have borrowed these last two descriptions from Sir Louis Blom-Cooper, QC, who applies them to Lord Denning. See ‘Lord Denning’s Legacy: a Judicial Misfit?’ in *Power of Persuasion. Essays of a Very Public Lawyer*, 2015, pp.334-47.

women alike (women became eligible for call to the Bar after 1918), ‘no present-day figure on the Bench,’ the *Law Journal* declared in 1926, ‘is of greater interest than Mr Justice McCardie’.¹⁸

The historiography of McCardie began immediately after his death, when his confidential Clerk, Philip McCann, lent his name to a series of articles in the *People* under sensational headlines but of the utmost value for his first-hand knowledge of McCardie across 25 years. In 1934, a former pupil, George Pollock, published *Mr Justice McCardie. A Biography*. Held out as ‘the official biography’, it ran to two editions, but was hard hit by some reviewers. ‘The book’, wrote one, ‘is useless to the lawyer. . . Nor does the man emerge at all’.¹⁹ Whatever truth there may be in the first comment, there is none in the second. Like McCann, Pollock had the inestimable advantage of direct testimony. Professor Shetreet dismisses it as ‘hagiography’,²⁰ but even if it were no more than that, it would still be proof of the regard in which McCardie was held by the Bar.

Further proof of that regard was an anthology of his judgments, published in 1932 by another barrister, Albert Crew, under the title *Judicial Wisdom of Mr Justice McCardie*. Judges’ rulings are not normally commemorated outside the Law Reports, and the appearance of such a title can have done little to calm his colleagues’ irritation. Not all of the editor’s choices reflect the predilections of the present day, however, or even of his own. The *Spectator* complained at the time of the book’s ‘ineffable dullness’.²¹

After my entry on McCardie appeared in the *Oxford Dictionary of National Biography* in 2004, I came across two further books of considerable interest. The first, by Henry Archer, published the year before under the unrevealing title *Mr Hardie*, contains a remarkable personal account of McCardie from an unexpected angle. The same, from another perspective, is true of Sybille Bedford’s *Jigsaw. An Unsentimental Education*, published in 1989. In 2005 Mr Conrad Dehn QC drew together some of the threads from both books in an address to the Thackeray Society entitled ‘Mr Justice McCardie – an unusual judge’.

Both as barrister and judge, McCardie took part in many trials of great human interest but little legal significance. These may be read in Pollock’s biography. The present account aims to shape McCardie’s story around the main stages of his career through a selection of the cases that characterize his qualities as a judge, to bring out the driving forces that underlay his

judgments, and to produce from the evidence an authentic image of the man whose heart, he was fond of saying, always beat beneath the judicial robes.

A fellow-judge described McCardie as ‘a law reformer of outstanding courage and clear vision’.²² The *Manchester Guardian* predicted that history ‘will give Henry McCardie his place in the succession of the great common-law judges of England’,²³ and George Pollock that his judgments ‘will be, for all time, a storehouse of legal learning’.²⁴

Sir Frank MacKinnon thought otherwise. Though he knew and liked McCardie, he thought his appointment ‘unfortunate’, held a low opinion of his judgments and was clear that McCardie was not ‘a great judge’.²⁵ MacKinnon was an elegant and fastidious penman, well known for the authoritative expression of his views on fellow judges in the *Dictionary of National Biography* and elsewhere. His verdicts as the Minos of judicial reputations have proved canonical, and in McCardie’s case—damning.* Sixty years on, Lord Pannick, QC, agrees that McCardie was not ‘distinguished as a judge’ and indeed dismisses him as ‘a rather poor judge’ who ‘should have been a columnist on the *Daily Mail*’.²⁶

And McCardie himself? He ruefully predicted, ‘I shall at some time or another fall into just a tiny niche in legal history’.²⁷ Conversely, another judge,* who saw McCardie as a man ahead of his time, went as far as to claim that ‘after all the rest of the judges were dead and forgotten, Mr Justice McCardie was the one who would live in the judgments he had

* See his masterly entries on Lord Sumner, Lord Justice Scrutton and Mr Justice Talbot in the *Dictionary of National Biography 1931-1940*. MacKinnon considered Talbot a ‘very great judge’, ‘the greatest judge I have known’. He regretted that his promotion to the Bench was delayed by that of McCardie and contrasted Talbot’s qualities as ‘the ideal judge’ with those of ‘McCardie, who had supplanted him’. (F. D. MacKinnon, *On Circuit 1924-1937*, 1940, pp. 27, 113; ‘An unfortunate preference’, *Law Quarterly Review*, 61, July 1945, p. 238; *DNB*).

* Sir Henry Holman Gregory, Recorder of Bristol, Common Sergeant and Recorder of London. In 1924, Lord Haldane, as Lord Chancellor in the first Labour government, intended to promote Gregory to the High Court but the Government fell before he could do so.

given'.²⁸ Deciding between these extremes falls to what McCardie called 'the passionless judgment of future generations'.²⁹ *

* Lord Justice Munby, President of the Family Division, and the former Lord Chief Justice, Lord Judge, have paid passing tribute to McCardie. (Sir James Munby, Incorporated Council of Law Reporting Annual Lecture, 2013, http://www.familylaw.co.uk/news_and_comment/marriage-from-the-eighteenth-century-to-the-twenty-first-century#.Vxo2DcLmqUk. Lord Judge, John Harris Memorial Lecture, 2011, <http://www.cjp.org.uk/news/the-criminal-justice-system/sentencers-judges-magistrates-district-judges/lord-chief-justices-speech-to-the-police-foundation-08-07-2011/>).



Figure 2. Henry McCardie, newly qualified barrister, 1894, aged 25

‘In the bright lexicon of youth
There’s no such word as fail.’
—McCardie, quoted in his Note Book

CHAPTER ONE

‘NO SUCH WORD AS FAIL’: FROM BAR TO BENCH

Non mihi deero

(I will not let myself down. I will not fall short of myself) after Horace,
Satires, I, ix, 56

—Opening entry in McCardie’s Note Book

*Birth—school—the Bar—McCardie’s appearance—as an advocate—
moves to London—offer of a parliamentary seat—his daily routine—his
caseload—applies for silk—his earnings—attitude to money—as junior to
Marshall Hall— appointment to Bench—background—Asquith.*

Henry Alfred McCardie was born in Edgbaston, Birmingham, on 18 July 1869, the third of four sons and fourth of the seven children of Joseph and Jane McCardie. His father was a Protestant Ulsterman from Desertmartin near Margherafelt in County Londonderry, who settled in Birmingham in 1840 and set up in business with a brother as button-manufacturers. His mother was the daughter of a prosperous Derbyshire farmer. Joseph’s business flourished, he became a well-known public benefactor in Birmingham, and the family lived in a large mansion in fashionable Edgbaston. But he died when Henry was eight years old. Henry’s mother was a woman of unusual energy and clear-sightedness, qualities which he always said he inherited from her. In a close-knit family, Henry was said to be her favourite.

In 1880, aged 11, Henry followed his elder brothers to Birmingham’s King Edward VI School, then under its headmaster the Rev. Albert Vardy. McCardie excelled at games, athletics and boxing, rather than scholarship, and he was consistently near the bottom of the class. He seemed an amiable and plucky lad, but neither his teachers nor his schoolfellows saw in him anything out of the ordinary. One form-master set him down as a wastrel, and stung by his disdain, McCardie determined to prove him wrong. When the master offered a prize for the boy with top marks that

term, McCardie saw his chance. For a time he worked like a demon. Not only did he win the prize at the hands of the disconcerted master, but he also discovered in himself a passion for books, learning and achievement.

He learned at King Edward's 'to work hard, to play hard and enough of Latin and Greek to inspire in me an enthusiasm for the classics which I have never lost',³⁰ he said later. But the more important part of his education was that which he acquired for himself from an amount and variety of reading prodigious for an adolescent. He wrote reams of romantic verse and dreamed of a life in literature—or the Church, for the Rev. Vardy's influence imbued him with a respect for a broad, non-sectarian Protestantism and for Christian ethics, though never for dogma. The memory of twice daily school prayers remained with him throughout his life. Outside school he attended a Congregational Chapel.

His eldest brother William went up to Cambridge in 1885 to read medicine, the first step in a career no less distinguished than Henry's as one of the country's pioneer anaesthetists. Of the other two brothers, one qualified as a ship's engineer and emigrated to Canada, the other became a stockbroker. Henry himself left King Edward's in 1884 aged fifteen after only four years of secondary schooling. Why he left is uncertain. Perhaps he or his mother felt the pinch and the need for him to go out and earn a living. The family had moved home after Joseph's death, but their second house was only slightly less grand than the first. Perhaps Henry was restless and unsettled. After some desultory starts in various unsuccessful business ventures, he worked as a clerk for Thomas and Bettridge, an old firm of Birmingham auctioneers. He said later that the experience he acquired there in the ways of commercial practice had proved invaluable to him as a lawyer. But meanwhile he was in a rut.

McCardie had a school friend from King Edward's, named Philip Baker, with whom he used to go shooting, a rising young solicitor in Birmingham and founder of what would become a well-known firm in that city. Baker discerned McCardie's promise and offered him a partnership in the firm if he became a solicitor, but advised him that he would be much better suited to a career at the Bar. McCardie agreed that he had 'chopped and changed enough already'. It was high time to settle down, and this time he must make a go of it. 'I cannot afford to make another wrong choice',³¹ he said. At the age of 21 he at last decided to read for the Bar.

He entered the chambers of J. J. Parfitt, K. C., a leader on the Midlands circuit (later a County Court Judge), at Bennett's Hill in the heart of Birmingham, and was admitted a student of the Middle Temple. From the first he was an indefatigable worker, who, having once set his mind on the law, threw himself into it wholeheartedly. 'He lived and talked in a perpetual atmosphere of law cases and law books', remarked one of the Clerks. 'His work was his God'.³²

McCardie joined the Birmingham Law Students' Society and was active in moots and debates. On 18 April 1894 he was called to the Bar at the age of 25. He came top in his final examinations and was awarded a prize for criminal law by the Middle Temple, and a certificate of honour by the Council of Legal Education jointly with another Middle Templar, later the South African statesman, Jan Christian Smuts.³³

His schoolfellow, the solicitor Philip Baker, proved a true friend, gave him his first brief and many others. Baker's judgment proved sound and Parfitt predicted a great future for McCardie. From the first, he was a success. He did much of the paperwork, or 'devilling', drafting opinions and pleadings and researching caselaw for senior Counsel on the Midland Circuit. In 1897, aged 28, in one of his earliest cases, *Carney v. Plimmer*, he appeared for the Birmingham boxer and world bantam-weight champion, Billy Plimmer. Plimmer and another boxer agreed to fight for a wager. Each would stake at least £500. The winner would take all. Plimmer borrowed his £500 from another boxer, Jem Carney. The total stake came to £1,400.

Plimmer won the fight and the wager. He knocked out his opponent, and he pocketed the takings. He refused, however, to repay the £500 to Carney, who sued for its return. The County Court judge found for Carney, but Plimmer appealed. He was represented by Hugo Young, KC, the acknowledged leader of the Midland Circuit, known as the 'Attorney-General' of Birmingham, and by McCardie. They argued that the loan, having been made in respect of a wager, was null and void under the Gaming Act. Carney admitted that he had lent the money on the understanding that it would be repaid if Plimmer won, but not if he lost. The Court of Appeal reluctantly agreed, while deploring Plimmer's unsportsmanlike conduct. The Master of the Rolls, Lord Esher, said he 'could not conceive a more mean or dastardly defence',³⁴ and refused to award costs to Plimmer. Still, victory was victory.

Philip Baker also briefed McCardie in a case where three members of a family were charged with receiving. Baker briefed Counsel for each defendant: Hugo Young, Parfitt, and McCardie. Young and Parfitt spoke first and there seemed little left for McCardie to say. But he surprised everyone with a masterly address to the jury, advancing some telling points which his fellow advocates had missed. All three defendants were acquitted.

The success of a practising barrister depends on his skill in advocacy, the arts of persuasion. These McCardie cultivated at local debating societies as well as in court, and he spoke in public whenever opportunity arose. He had accelerated his study of serious books from the age of 18, when he read Adam Smith, since when he claimed to have devoured 'almost every work of importance'³⁵ on economics. And not only economics. For a man with so little schooling and no university education, he became remarkably well-read and well-informed.

McCardie was of medium height, stocky, with a strong, athletic frame, a certain swing to his gait, a tendency to turn his legs outwards as he walked, and a slight tilt of the head. He looked taller than he was, with a handsome clear-cut face, square jaw, bushy eyebrows, twinkling eyes and a humorous, quizzical expression. Gracing a pleasant appearance was the indefinable element of good-humoured charm which many attributed to his Irish blood, together with a warm-hearted temperament that bridled at injustice. A cousin, describing 'his peculiarly attractive personality', recalled

those large, tender, expressive, tremendous dark eyes, which were his inheritance from his . . . Celtic ancestry, eyes that seemed to overflow with affection and sympathy, or soften at the touch of sentiment, to sparkle with wit and to glow with enthusiasm, or suddenly flame with indignation.³⁶

Perhaps it was also from his Irish forbears that McCardie inherited his sociability. He was a keen tennis player who played for Warwickshire, and he was musical, a regular participant in smoking concerts, with a pleasant tenor voice, given to such sentimental songs as 'I did but see her passing by' and 'Danny Boy'.³⁷ In London, he often attended service at St Anne's, Soho, known for the excellence of its choir.

'The most charming and courteous member of the Bar',³⁸ according to a fellow counsel, McCardie exuded the same winning attraction in court. He had, we are told, 'a beautiful delivery', 'very polished diction'³⁹ and an