

LORD ERSKINE

When Liberty is endangered, her first defence is made in the courts, her final stand upon the battlefield.

British liberty has been fortunate, in that her forensic defenders have been so formidable that an appeal has seldom been taken from the courts to the battlefield. A score of forensic giants have pleaded in liberty's defence in British courts, but head and shoulders above them all stands Thomas, Lord Erskine, "the greatest advocate of ancient or modern times".

In the turbulent years following the revolution in France, Erskine's forensic genius aided reform to triumph over revolt in England, by carrying the day for freedom in the courts, thus obviating the necessity of an appeal to the battlefield. Erskine jumped into the breach and turned the tide of battle at the moment of the greatest crisis in the checkered history of British liberty. As Lord Campbell observes: "Erskine and the crisis were framed for each other. He might have passed through life a well-employed barrister, admired by his contemporaries for his skill in winning verdicts, and forgotten as soon as the grave had closed over him. But his contemporaries, who without him might have seen the extinction of freedom among us, saw it by his peculiar powers placed upon an imperishable basis." Since Lord Campbell penned this tribute, British freedom has often been in a precarious position : it has been sorely tried, and the wonder is that it has not fallen from its pedestal. History bears eloquent testimony to the thoroughness with which Lord Erskine, liberty's most fearless priest, did his work.

Thomas Erskine was born in Edinburgh, in January, 1750, the third and youngest son of Henry David, tenth Earl of Buchan. His father was not endowed with many of this world's goods, and Erskine as the youngest son had last call upon the family exchequer. Denied by poverty a conventional university education, at fourteen Erskine went to sea as a midshipman. He followed the calling of a sailor for four years, then, because his prospects for advancement were not bright, he left the navy to become a soldier.

At twenty Erskine fell in love, and though his family did not consider it the part of wisdom, he married the girl of his fancy. Privation and want were the constant companions of his first years of married life, but his early marriage was a blessing in disguise, for responsibilities made him become seized of the seriousness of life. His wife was in every way worthy to be his

mate. She had an enquiring mind and insatiable curiosity, and inspired him to explore the realms of literature and science. It was she who encouraged him to dwell with Shakespeare and Milton, and thus acquire that command of language which, as Rufus Choate says, enabled him to speak the best English ever spoken by an advocate.

We live under sealed orders, never knowing our destiny until it is upon us. Fate was waiting round the corner for Erskine. A few years after his marriage, the regiment to which he belonged was quartered in an assize town. One afternoon when he was off duty, in search of diversion to lift the burden of debt off his mind, he strayed into a court presided over by Lord Mansfield, a distant relative of his. Catching sight of him in the crowd, the noble judge invited him to a seat on the bench. From his seat of vantage, Erskine followed the proceedings in court with rapt interest. A court room was a novelty to him, but there was a strange familiarity about its atmosphere, for advocacy was native to his blood. By a happy accident, he had found the work for which he was fitted both by temperament and by inclination.

At the adjournment of court, he enquired if the advocates, whose efforts had held him spellbound, had any standing in the legal profession. Lord Mansfield told him that they were the leaders of their circuit. Erskine felt within his soul that, with training, he could plead a case as well as they could, and he said as much to Lord Mansfield. To prove his point, in April, 1775, he left the army and entered himself as a student at Lincoln's Inn. In January of the next year, he entered his name at Trinity College, Cambridge, his desire being to obtain a degree so as to shorten his term under articles by two years.

Erskine was called to the Bar on July 3rd, 1778. From the very beginning of his legal career, he was the darling of fortune. An accident was to plant his feet firmly upon the pathway to forensic success. He appeared as fifth counsel for the defence in the cause of *Rex v. Baillie*. His leaders were men of many words but little substance, and wasted a whole day in settling preliminaries. On the opening of court on the second day of the trial, Erskine was the only defence counsel who had not been heard. No one but his client took him seriously, and it was not expected that he would have a word to say, but seizing opportunity by the forelock, he addressed the court from a back bench. His opening sentences came faint and feeble, but squaring back his shoulders and casting diffidence to the

winds, he launched forth on a flood of eloquence, ballasted with logic and hard fact, which captivated the court and obtained a verdict for his client. That one speech placed Erskine in the front rank of the advocates of his day. It brought solicitors to his feet. It is recorded that before he left the scene of his first triumph, thirty retainers were thrust into his eager hands.

Lord Mansfield presided at the trial of *Rex v. Baillie*. He was a judge with whom counsel took few liberties, but Erskine locked horns with him and stood his ground bravely. Afterwards, when Erskine was asked how he had dared to stand up against such a forbidding judge, he replied that he was about to lose heart and concede his case, when he imagined he felt his little children tugging at his gown crying, "Now, father, is the time to get us bread." Stern necessity was the spur that drove him on to forensic success.

An interesting fragment found among Erskine's papers has been given to the profession by the Hon. R. Erskine, a descendant of the great advocate. In this fragment, written in the twilight of his life when the shadows had begun to gather, Erskine gives more credit to circumstance than to skill for his success. It reads :

If it had not rained tempestuously when I went to keep my term at Lincoln's Inn, having discharged my coach before I knew that dinner was an hour late, I never should have turned the [word illegible] board of the Chancellor's causes, and should never have seen the rules of the society, which let me know that above two years' time would be accelerated by the degree of Master of Arts in an English University, and thus the Greenwich Hospital case [the Baillie case] my first in the King's Bench and [word illegible] in the House of Commons, which made my fortune, would have been over nearly two years before my being at the Bar, and had it not been for my appearance in those causes I should not have been counsel for Admiral Keppel, nor for Lord George Gordon.

But many other circumstances, equally necessary for my success and equally singular in their concurrence, were behind. If I had kept my appointment with Agar, I should have sat near the head of his punctilious table, and should never have conversed with the brother of Captain Baillie, nor have been introduced by him to his brother, whose cause was then pending; and if I had not. . .

Here the fragment comes to an abrupt end, leaving us to wish that Erskine had pursued his fancy further. The Hon. R. Erskine explains the reference to the punctilious table of Agar thus : had Erskine arrived at dinner on time, being a member of the nobility, he would have been seated above the salt, in which case he would not have met Captain Baillie's brother, a commoner.

While he had confidence in his abilities, Erskine never flattered himself that he was born to great place. Unlike Lord Birkenhead in our own day, he did not have infinite faith in the ascendancy of his star. His position was closer to that of Clarence Darrow, who holds that success is more often than not the result of a chain of fortuitous accidents. On one occasion, Erskine said, "Success in life often depends more upon accident and certain physical advantages, than upon the most brilliant talents and the most profound erudition." Such a sentiment inoculated him against the germs of megacephalitis.

Lord Erskine's defence of Captain Baillie foreshadowed his forensic career, in that in it, his maiden effort at the bar, he exhibited great moral courage, unquestionably his greatest asset as an advocate. Baillie was prosecuted at the instigation of Lord Sandwich, First Lord of the Admiralty. Erskine was rebuked by Lord Mansfield for referring to Lord Sandwich, who was not formally before the court. He answered the noble judge's rebuke in these words: "I know that he is not formally before the court, but for that very reason I will bring him before the court. He has placed these men in the front of the battle in hopes to escape under their shelter, but I will not join in battle with them; their vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with me. I will drag him to light who is the dark mover behind this scene of iniquity." Surely daring words for an unknown barrister, with his mark yet to make, to employ in derogation of a First Lord of the Admiralty.

Erskine's moral courage was seen to best advantage in his defence of Thomas Paine, who was charged on information for the publication of his book *Rights of Man*. Paine was in advance of his day and paid the penalty that all advance scouts of humanism must pay. Popular prejudice prejudged him, and having found him guilty did not think that he deserved to be tried according to law. His might have been the fate of Sir Walter Raleigh had he not had Erskine to defend him. Erskine was much criticised for undertaking the defence of Paine. He met his critics with the greatest vindication of the rights of the bar on record. When read in print, his fearless words still ring with the fire of their utterance:

In every place where business or pleasure collects the public together, day after day, my name and character have been the topics of injurious reflection. And for what? Only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled.

Little, indeed, did they know me, who thought that such calumnies would influence my conduct: I will for ever, at all hazards, assert the dignity, independence, and integrity of the English Bar; without which, impartial Justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practise—from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and commands the very judge to be his counsel.

A perusal of these noble sentiments recalls to mind the conduct of Cicero when he found himself in a similar situation. The great Roman advocate was engaged to defend Titus Annius Milo, who was charged with murdering Publius Clodius. Feeling ran high against Milo, for Clodius was a favourite, and Cicero was censured for undertaking the defence. On the day of the trial, Clodius' friends, many of them heavily armed, thronged the courthouse. When Cicero rose to address the court, he was greeted with shouts of derision and threats of personal violence. Not caring to face the music, he made only a half-hearted plea on behalf of his client, saying lamely, "*Silent enim leges inter arma.*" To soothe his conscience, sometime after the trial of Milo, Cicero wrote his oration *Pro Milone*. One day his unfortunate client, enjoying exile in Gaul, chanced upon a copy of *Pro Milone*. On reading it, his caustic comment was that he was glad Cicero had never uttered it in his defence, else he should not now be enjoying the delicious mullets of Gaul.

Well it has been said that courage is the greatest of virtues, for it is the basic virtue and comprehends all others. Erskine's moral courage made him the pre-eminent advocate of the ages. His fearlessness enabled him not only to rise superior to popular passion, but to avoid that attitude of servility to the bench, which is the characteristic of those advocates, who, lacking manly fortitude, seek to find in judicial favour a substitute for it.

Of advocates, ancient or modern, John Philpot Curran alone challenges comparison with Erskine in this respect. In 1798, while defending the prisoners in the state trials which followed the Irish revolt of that year, the little Irish forensic gladiator shouted defiance to all the forces of the Crown in these memorable words, "Assassinate me, you may; intimidate me, you cannot".

Curran did not waver a hair's-breadth in his defence of his countrymen, though his life and liberty were in jeopardy. When it was intimated to him that he would be struck off the rolls, for incurring Royal disfavour by daring to plead the cause of traitors, his scornful reply was, "Well, his majesty may take the silk, but he must leave the stuff behind."

Erskine appeared for the defence in most of the state trials, which took place while he was at the bar, in which the liberty of the subject or the freedom of the press were in issue. With his success in the *Baillie* case still fresh upon him, he was briefed as junior counsel by Lord George Gordon, who was charged with high treason, following the ill-fated Gordon riots in London in 1780. Mr. Kenyon (afterwards Lord Kenyon) was his leader, and made but an indifferent speech on behalf of Lord Gordon. Sensing that the jury was ripe for conviction, at the conclusion of his leader's address, Erskine did not follow him, but resurrecting an ancient precedent, reserved his address until all the evidence was on record. It was a master stroke on his part, for it placed him in a position to tear to shreds the evidence of the Crown. Lord Campbell is most enthusiastic in his praise of Erskine's speech on behalf of Lord Gordon. He says, "Erskine rose a little after midnight, and not only instantly dispelled all feeling of exhaustion and lassitude from the minds of the jury, the Judges, and the bystanders, but, while he spoke, they seemed all to be inspired with a new ethereal existence, and they listened as if addressed by some pure Intelligence of Heaven, who had appeared to instruct them!"

Lord Gordon's acquittal laid to rest the ghost of constructive treason which had hitherto haunted English law. Henceforth, no one was to be convicted of treason unless he did some disloyal act. A disloyal heart, though evidenced by disloyal utterances, was no longer sufficient to found a conviction for treason.

In 1783, Erskine was returned to Parliament as member for Portsmouth. Despite his pre-eminence in the courts, he never shone with any particular brilliance in the Parliamentary firmament. As a contemporary remarked, the giant of the forensic arena fell to the level of an ordinary man in Parliament. In the Commons, Erskine encountered Pitt the Younger and quailed before him. Thereafter, he seemed to stand in awe of the great statesman. On one occasion Sheridan chided him with, "I'll tell you how it happens, Erskine, you are afraid of Pitt and that is the flabby part of your character".

Few great advocates have made their mark as statesmen and the greatest advocate of them all was no exception. Advocacy

and statesmanship are at opposite poles. They call for different talents. The advocate speaks to convince, he seeks the most direct route of bringing twelve men around to his way of thinking. He deals with the concrete. His words must bear immediate fruit or his effort is wasted. The statesman speaks to charm. Very often he has no other end in view than the desire to delight his audience with the sound of his voice, and thus gain its confidence. He deals with theory, and more often than not the seeds he plants are not harvested until long after his voice is stilled.

Erskine made one masterly speech in the House of Commons, which might have been uttered yesterday, so modern is its significance. In this speech he attached those with whom war-making is a business. The following sample from it gives its fine acid flavour :

But at the conclusion of ten year's war how are we recompensed for the deaths of multitudes and the expense of millions but by contemplating the sudden glories of paymasters and contractors and commissaries, whose equipages shine like meteors and whose palaces rise like exhalations! These are the men who, without virtue, labour, or hazard, are growing rich as their country is impoverished; they rejoice when obstinacy or ambition adds another year to slaughter and devastation; and laugh from their desks at bravery and science, while they are adding figure to figure, and cypher to cypher, hoping for a new contract from a new armament, and computing the profits of a seige or a tempest.

One of Erskine's few great political speeches was made in the House of Lords, when he arose to sponsor a bill for the protection of animals. This speech illustrates the depth and breadth of his humanism, as the following excerpt from it witnesses :

As to the tendency of barbarous sports of any kind or description whatsoever, to nourish the national characteristics of manliness and courage (the only shadow of argument I ever heard on such occasions), all I can say is this, that from the mercenary battles of the lowest of beasts (*viz.*, human boxers) up to those of the highest and noblest that are tormented by man for his degrading pastime, I enter this public protest against it. I never knew a man remarkable for heroic bravery whose aspect was not lighted up by gentleness and humanity, nor a kill-an-eat him countenance, that did not cover the heart of a bully or a poltroon.

In 1783, Erskine defended Dr. Shipley, dean of St. Asaph, on a charge of seditious libel. The charge arose out of the publication of a pamphlet, advocating mild social reforms which was written by Sir William Jones, the great orientalist and jurist.

Mr. Justice Buller presided at the trial. In his address to the jury, Erskine abandoned his usual impersonal form of advocacy, declaring that it was his duty to express his own sentiments,

for although, in ordinary cases, when the private right of the party accused is alone in discussion, and no general consequence can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder, yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution. . . . the advocate has a more extensive charge—the duty of the patriot citizen then mixes itself with his obligation to his client—and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character, and vindicate the rights of all his fellow-citizens, which are attacked through the medium of the man he is defending.

Erskine maintained the question of libel or no libel was a question of fact for the jury. He stressed the point that an act must have an element of consciousness before it can be considered criminal. “Crimes,” he said, “consist wholly in intentions, and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge.” The jury should look not to the act but to the motive with which it was done, he contended. In his summing up, Mr. Justice Buller instructed the jury otherwise. The jury retired for half an hour and came back with the verdict—“Guilty of publishing only”, whereupon the following scene took place in the courtroom :

MR. JUSTICE BULLER. You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment?

A JUROR. Certainly.

MR. ERSKINE. Is the word “only” to stand as part of your verdict?

A JUROR. Certainly.

MR. ERSKINE. Then I insist it shall be recorded.

MR. JUSTICE BULLER. Then the verdict must be misunderstood. Let me understand the jury.

MR. ERSKINE. The jury do understand their verdict.

MR. JUSTICE BULLER. Sir, I will not be interrupted.

MR. ERSKINE. I stand here as an advocate for a brother-citizen, and I desire that the word “only” may be recorded.

MR. JUSTICE BULLER. Sit down, sir! Remember your duty, or I shall be obliged to proceed in another manner.

MR. ERSKINE. Your lordship may proceed in what manner you think fit. I know my duty as well as your lordship knows yours. I shall not alter my conduct.

When Erskine made this spirited reply, his lordship, thinking that he might bite off more than he could chew, decided to let

the matter pass. Lord Campbell says that this skirmish between Erskine and Mr. Justice Buller had a salutary effect on the profession, for it more clearly defined the respective spheres of the judge and the advocate. Erskine realized that the advocate is as much an integral part of our system of justice as the judge upon the bench. His courage in standing up for his rights did much to increase the dignity and status of the advocate.

Though Dr. Shipley was convicted, Erskine's conduct of his case paved the way for Fox's Libel Act of 1792, which placed the liberty of the press and the freedom of speech under the protective wing of the jury, by making it the sole arbiter of the question of libel or no libel.

The strongest blow Erskine ever struck on behalf of civil liberties was his defence of Stockdale. As Lord Campbell says, "As counsel for Stockdale he (Erskine) made the finest speech ever delivered at the English Bar, and he won a verdict which for ever established the freedom of the press in England." To read Erskine's speech in Stockdale's behalf is to agree with the first half of Lord Campbell's statement, for one cannot imagine a single detail in which it could be improved upon.

Stockdale was charged with a libel reflecting on the House of Commons. The charge arose out of his publication of a pamphlet, in 1789, in defence of Warren Hastings whose impeachment was then pending in the House. Erskine's defence of him was a defence of Hastings. Carrying the war into Africa, with matchless logic, Erskine proved that Hastings had but obeyed orders in his exploitation of India, and that if he were guilty of any crime, his country must shoulder the blame. In Stockdale's case, Erskine was opposed by the Attorney-General of the day, Sir A. Macdonald, who forewarned, but did not forearm, the jury against Erskine's eloquence in these words: "To him (Erskine) belong infinite eloquence and ingenuity, a gift of persuasion beyond that which I almost ever knew fall to any man's share, and a power of language greater than that which ever met my ear."

I have read Erskine's reported speeches, and in that treasure-house of eloquence, to my mind, the most brilliant jewel is his defence of Stockdale. One passage, in praise of Liberty, the motive which recurs through all his speeches, may give some indication of Erskine's power of eloquence :

Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path: subject it to the critic, and you tame it into dullness. Mighty rivers

break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilize in the summer: the few may be saved by embankments from drowning, but the flock must perish for hunger. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself, *the last and best gift of God to his creatures*, must be taken just as she is. You might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law, but she would then be Liberty no longer: and you must be content to dwell under the lash of this inexorable justice, which you had exchanged for the banners of freedom.

When Stockdale's defence was placed on this level, one does not wonder that the jury acquitted him. The only wonder is that they took two hours to bring in their verdict.

On July 14th, 1789, a Parisian mob stormed the Bastille, the symbol of the ancient régime in France. This event was the prelude to the French Revolution, which had serious repercussions in England. The English political horizon became overcast by the stirring events on the continent. Fear corroded the hearts of the rulers of the nation, and fear, as Sir John Macdonell points out, brings back a primitive conception of justice. Where fear is, there reason cannot be. Fear distorts facts and magnifies trifles. It looks upon the mildest suggestion of reform, however necessary or constitutional, with suspicion. In the England of that day, there were numerous friendly societies, having a genuine interest in those constitutional reforms, which were certainly long overdue, and which were soon to be achieved. Parliament, dictated by fear, in 1794, gave the Attorney-General instructions to arrest the officials of these societies. Pursuant to his instructions, the Attorney-General arrested several persons, and true bills for high treason were found against them. Thomas Hardy, secretary of one of the societies, was the first man selected by the Crown to stand his trial. Erskine appeared for the defence. His conduct of the case is regarded by Henry Roscoe as the most substantial movement of his genius.

Had Erskine not succeeded in his defence of Hardy, England might have followed the French precedent and taken an appeal to the battlefield. Roscoe says, "Never in the judicial history of this country did so weighty, so overwhelming, so appalling a duty devolve upon one man. The lives and fortunes of thousands of his countrymen, nay the liberties of his country itself, were involved in the issue. Had a conviction been obtained against Hardy, the consequences might have been most fatal. The streams of blood flowing from the scaffold must have been swelled by that

shed in civil disturbances. Already the passions of the people were excited to a degree which every day threatened the public tranquility; and nothing was wanting but some grand spectacle of blood, like that contemplated by the government, to rouse them into action."

Hardy's acquittal brought about the collapse of the prosecutions against the other accused. True, Horne Tooke, the brilliant political pamphleteer and friend of Paine, was put upon his trial, but Erskine was so confident of victory that he did not treat the affair with his usual solemnity.

Erskine was appointed Lord Chancellor by the Whig Ministry of 1806, and in consequence of this appointment, he was raised to the peerage as Baron of Erskine of Restormel Castle. He did not make a formidable chancellor, for he had little black letter learning and he knew next to nothing of equity. As an advocate, his practice had been confined entirely to *nisi prius* cases. He had a common law lawyer's prejudice against courts of chancery and consistently refused to appear in them. On one occasion, when he was asked from the bench why he did not go to a court of equity, he replied, "Would your lordship send a dog you loved there?" Though his tenancy of the Great Seal did not enhance the reputation his advocacy had won for him, he occupied his high position with dignity and reserve. He did not disgrace his office and discredit his name, as did Sir James Scarlett when he was raised to the Woolsack. Lord Erskine occupied the chancellorship but twelve months. He resigned office in 1807 on the defeat of the Whig administration.

"Trial by Jury" was the motto Lord Erskine chose for himself as Lord Chancellor, thus proving that he had not retreated one step from the position he took in Dr. Shipley's case, when he said, "The administration of criminal justice in the hands of the people is the basis of all freedom. While that remains, there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men who, however independent, have no common interest with the mass of the people." Throughout his whole career, Erskine manifested great faith in our system of trial by jury. Like Solomon, he believed that in a multitude of counsellors there is safety.

Lord Erskine's last appearance in public was in the House of Lords, when he spoke in defence of Queen Caroline, unhappy consort of King George IV. He was sitting in judgment on

the fate of his Queen, but her sad plight touched his pity and appealed to his manhood, and divesting himself of his judicial capacity, he became once again the peerless advocate. For Erskine, the shadows were drawing close. He had no worldly advantage to gain by championing Queen Caroline, and much to lose; but he was true to the ideals of a lifetime. With all his old charm and much of his old fire, he rose in the House of Lords and said, "My principles I have never deserted, and never will desert. . . . My Lords, I am an old man, and my life, whether it has been for good or for evil, has been passed under the sacred rule of the law." As he drew to a close, he quoted that noble panegyric of Hooker: "Of Law, there can be no less acknowledged than that her seat is the bosom of God; her voice, the harmony of the world; all things in Heaven and in Earth do her homage,—the very least as feeling her care, and the greatest as not exempted from her power: both angels and men, and creatures of what condition soever,—though each in different sort and manner, yet all with uniform concert, admiring her as the mother of their peace and joy."

What more fitting close to the career of "the brightest ornament of which the English Bar can boast?"

His first wife having died, Erskine contracted a second marriage, when he was over seventy years of age. Nothing was lacking to make this marriage one of the most romantic on record. Erskine eloped to Gretna Green with a youthful domestic, taking with him two children, and while the ceremony was being performed, he held his cloak over their heads because tradition declared that thus could legitimacy be conferred on them. On the occasion, Erskine had all the enthusiasm of youth. It is said that he "dressed as a woman and played many pranks".

Erskine's debt to perfect health is inestimable. In twenty-seven years of practice, he only absented himself one day from the courts on account of sickness. Advocates as a rule die young. They live in intensity what they lack in length of days. But Erskine's rugged constitution enabled him to live out his allotted span. Death came to him in November, 1823, while he was on a trip to Scotland.

Though words are more powerful than cannon-balls, and achieve more lasting good, the orator enjoys but a shining hour before he fades into oblivion, while the warrior attains deathless fame. Alexander is a household name, while Demosthenes is remembered as the man who put a pebble in his mouth and tried to out roar the waves. Napoleon's name is on the lips of every

school-boy; Marat is known as the man who was stabbed while taking a bath. Washington is the idol of a nation, while Patrick Henry is remembered because sometime, somewhere, he uttered that deathless phrase, "Give me liberty, or give me death."

An orator may tear men from the arms of their loved ones, and send them to die in defence of their country with a smile on their lips; he may, by pouring oil on the troubled waters of civil dissension, avert a national calamity; he may bind a nation to a cause with hoops of steel—and yet be forgotten in a generation, because his genius takes no permanent form. The orator does not leave behind a record in chiselled marble or enduring bronze to keep his memory green. Oratory dies upon the air, or at best, lives in the hearts of those who hear it. And the most transient of all forms of oratory is forensic oratory, which seldom survives the event that called it into being.

Few advocates achieve a permanent reputation. But such was the stage upon which Lord Erskine's career was set that his name will live, in the hearts of those who value liberty, until fame itself be dead.

What qualities made him the pre-eminent advocate of the ages? Hear Lord Brougham on this point :

Nor let it be deemed trivial, or beneath the historian's province, to mark that noble figure, every look of whose countenance is expressive, every motion of whose form graceful, an eye that sparkles and pierces, and almost assures victory, while it "speaks audience ere the tongue". Juries have declared that they felt it impossible to remove their looks from him when he had riveted and, as it were, fascinated them by his first glance; and it used to be a common remark among men who observed his motions that they resembled those of a blood-horse, as light, as limber, as much betokening strength and speed, as free from all gross superfluity or encumbrance. Then hear his voice of surpassing sweetness, clear, flexible, strong, exquisitely fitted to strains of serious earnestness, deficient in compass indeed, and much less fitted to express indignation, or even scorn, than pathos, but wholly free from harshness or monotony. All these, however, and even his chaste, dignified, and appropriate action, were very small parts of this wonderful advocates' excellence. He had a thorough knowledge of men, of their passions, and their feelings—he knew every avenue to the heart, and could at will make all its chords vibrate to his touch. His fancy, though never playful in public, where he had his whole faculties under the most severe control, was lively and brilliant; when he gave it vent and scope it was eminently sportive, but while representing his client it was wholly subservient to that in which his whole soul was wrapped up, and to which each faculty of body and of mind was subdued—the success of the cause.

The following noble and unselfish tribute honours Lord Brougham almost as much as it does Lord Erskine :

When the high heart we magnify,
And the sure vision celebrate,
And worship greatness passing by,
Ourselves are great.

Emerson says somewhere that nothing great was ever accomplished without enthusiasm. This thought strikes the keynote of Erskine's success as an advocate, for no more enthusiastic man ever donned a barrister's gown and wig. He threw his heart and soul into every case he undertook, from the greatest to the least significant. He knew no other gods but his clients' interests. Enthusiasm and animation glow from every page of his reported speeches. In cold black and white, his words carry conviction because of their fire and eloquence. How could mortal mind have resisted them, when they fell, vital with life, from his lips?

Lord Erskine compelled attention because of his absolute sincerity. A jury felt instinctively that he spoke no word he held untrue. And coupled with his sincerity was the ability to present a case in its best light. He had the faculty of making the jury see the cause and not the man. Under the spell of his eloquence, the prisoner at the bar was forgotten : the jury felt it was trying some important human right and not an individual.

In appraising Lord Erskine one thing must not be forgotten — he owed much to the times in which he lived. As Roscoe says, "The genius of Erskine seems to have been created at the very period which enabled it to shine forth in its brightest lustre. Had he lived in the generation either preceding or following his own, his eloquence would never have been called out, as it was, by the extraordinary and perilous circumstances in which the country was placed at the latter end of the last century. All the great principles of human action and human government were called in question."

Liberty needed a champion and Lord Erskine answered her need. And let it be remembered that when Liberty called to him in her darkest hour, she did not find him wanting. His eloquence was her sword, and his courage her buckler, and thus armed she was more than a match for her oppressors.

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