LORD BIRKENHEAD

THE EARL OF BIRKENHEAD
(After a painting by Captain Oswald Birley)

LORD BIRKENHEAD

BEING AN ACCOUNT OF THE LIFE OF
F. E. SMITH, FIRST EARL OF BIRKENHEAD

BY

EPHESIAN

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Quem superi comitem appellant FEque sodales
Accipias veteris pignus amicitiae

(Inscription on a bowl presented to Lord Birkenhead by Sir John Simon)

CONTENTS

LIST OF ILLUSTRATIONS

LORD BIRKENHEAD

CHAPTER I

"THE great Disraeli did not disdain the name of adventurer, and I am myself willing to be called one in the same sense. Life is an adventure. He who, starting with nothing, fights hard while conceiving ambitiously, must be an adventurer." With these words the subject of this biography—the very remarkable man who began his life as F. E. Smith and is now the Earl of Birkenhead—once summed up his philosophy of life and exposed the secret of his character and his career.

When, in 1919, Sir Frederick Edwin Smith, Bart., was raised to the peerage, it might have been noted that the crest on the arms of the new Baron Birkenhead was *Faber meae fortunae*, which, in English, is *The Smith of my own Fortune*. This concise legend is eminently characteristic.

First, it proves that the bearer did not propose to lose his identity in his new sphere and in the new name that accompanied his elevation. He

remains a Smith—perhaps *the* Smith—one of that vast army of Smiths who dominate every city directory in England and who have only lately been obliged to surrender to superior numbers of Cohens in New York. "There is no name in the land which stands so high and unchallenged as the name of Smith," Lord Birkenhead once declared with mock solemnity in an after-dinner speech. "If I should attempt to exhaust the list of the incomparable Smiths who have enriched our national life I should exhaust your patience." This boast was received with laughter. It is even doubtful if the Smiths, for all their numbers, may really be credited with superlative achievement. One might ask if there is any of them whose memory is immediately recalled, for example, by that strangely named Westminster thoroughfare, Great Smith Street? One thinks of Adam Smith, the economist; of Sydney Smith, the wit; Joseph Smith, the founder of Mormonism; Andrew Jackson Smith, the Federal general of Nashville fame; and G. O. Smith, the footballer; but in politics the only important bearer of the name until Lord Birkenhead was W. H. Smith, a First Lord of the Treasury and leader of the House of Commons, whose identity has, in the popular eye, been merged and forgotten in that of his father, the founder of the firm that distributes books and news-

papers throughout the British Isles. The magic initials of F. E. Smith, still bright with conversational use, have therefore shed a much needed lustre on a somewhat mediocre multitude.

Secondly, his crest is a polished Latinism, in which respect not all new peers are equally fortunate, and recalls that Lord Birkenhead is, not least among his achievements, a classical scholar, prepared even now to exchange elegiac epigrams with his friends and to compose suitable Latin inscriptions for monuments they erect.

Thirdly—and this shall be the last observation—the new baron's crest hinted with decent pride that its bearer had fashioned a splendid career by his own efforts. He, in his own definition of an adventurer, started with nothing, and, conceiving ambitiously, fought hard and with success.

The brilliance of his career has been equalled only by its storminess. Lord Birkenhead possesses, with the possible exception of Mr Lloyd George, the largest collection of devoted friends and of bitter enemies of any public man of to-day. To the first he is the pattern of eloquence, the incarnation of intelligence, the soul of chivalrous good-fellowship. To the others he is a self-seeker, a political upstart, a poisoner of the wells of public life. Both sides are agreed on one thing only—that he is a genius and an adventurer. Whether

a good or bad genius remains in question. And they attach different interpretations to the term "adventurer."

The youngest King's Counsel and Bencher of his time, the youngest Lord High Chancellor of modern times,[1] Solicitor-General, Attorney-General, Rector of Glasgow University, High Steward of Oxford University, Secretary of State for India —all before his fifty-third birthday—not even Wellington had such a career as this. Add to it that he proved himself at Oxford a scholar of singular capacity; that he was the most successful pleader of his day at the Bar and the best debater in Parliament; that he is a standard authority on International Law, and has achieved the ambition of many Lord Chancellors by codifying the laws relating to property; that he has written a score of books on diverse subjects, not a single one of which has failed to go into a second edition, while several have gone into five or six; that he is

[1] Lord Thurlow was also appointed at forty-six. "I put on one side a notorious personage, who in the evil days of the Stuarts was for a short season pitchforked into power to do the dirty work of tyranny, I put Judge Jeffreys aside as one who was not in the line of the true apostolic succession of the Chancellors of England, and then I believe I am right in saying that our guest of to-night [Lord Birkenhead] is the youngest man who has been called to the great office of Lord Chancellor of England." (Master Mattinson, K.C., at Gray's Inn, May 9, 1919.)

an athlete and yachtsman of achievement; that he is the most popular speaker in the country on a political platform; that his private conversation is as attractive as his oratory—and one begins to attain some comprehension of the capacity of the man.

The achievement becomes the more remarkable when its early circumstances are considered. He was born in Birkenhead—the Mersey-side sister-city of Liverpool—on July 12, 1872. It is not recorded that comets were seen. Had they been, they would not have been locally associated with the birth of a son to Frederick Smith, a barrister, and his wife, whose maiden name was Elizabeth Taylor.

Frederick Smith—I speak of the father—was an interesting person. He, too, forged himself a sufficiently remarkable career. His grandfather was a miner, working in the Wakefield pit, and the champion heavyweight boxer of all the Yorkshire collieries. His father—Lord Birkenhead's grandfather—founded a land agency business in Birkenhead which has become the most important in all Cheshire.

The land agent was sternly, even narrowly religious. He discovered one Sunday that his son, then seventeen years old, had desecrated the Sabbath by skating. He met him on the doorstep and

reprimanded him, ending with the words, "You have no place in a Christian home."

"Do you mean that?" said the boy.

"Yes. Go!" replied the Methodist father.

Young Frederick Smith turned about, crossed the Mersey on the old steamboat ferry, and enlisted as a private in the Royal Artillery. Eight weeks later his regiment was ordered abroad, and he was on his way to India. There he saw active service on the North-West Frontier. That he became a sergeant-major at twenty-one proves that he possessed personality and ability. Before long he was earning the not inconsiderable income of £800 a year by teaching the classics and mathematics to his officers' children and, a curious sideline, by administering a small theatre.

A taste for the stage certainly runs in the family. One of "F. E.'s" sisters became a professional actress; and his brother, the late Sir Harold Smith, besides being an amateur actor of sufficient merit to attract the attention of Sir Herbert Trée, was a writer of plays, one at least of which was produced in the West End of London. It is certain, too, that had "F. E." himself attempted a stage career he could have won great distinction. He is a natural actor, with a strong sense of character, and has, what is too often lacking on the stage nowadays, a perfect

RFDERICK SMITH, SEN

delivery. He played, with such success as the occasions permitted, in school performances of Molière's *Malade Imaginaire* and Terence's *Adelphœ*, but there is no record of later histrionic adventures.

When the sergeant-major left the army he entered his father's business at Birkenhead as a house-agent—a tedious if not unremunerative calling from which he at last extricated himself for the more congenial, if not less hazardous, profession of the law. He ate his dinners at the Middle Temple, and became a barrister on the Liverpool circuit. He was by nature extremely eloquent—his famous son insists that his own skill in this respect is hereditary—and he had sufficient intuition, or at least paternal pride, to prophesy that his son would one day be Lord Chancellor.

Nor did he neglect his opportunities to enjoy the pleasures of travel. It is a solemn thought that young "F. E." was the first person ever to ride a bicycle in Cairo. Mounted on a "bone-shaker," he accompanied his father, who rode a more conventional and probably speedier local ass, from the centre of the city to the Pyramids. The onlookers—like "F. E." himself, but for different reasons—regarded the bicycle as a diabolical machine, and they scattered before it in all directions. The exact date of this notable episode in Egyptian history is obscure, but Lord Birkenhead

recalls that he was then sufficiently young to be allowed to bathe in one of the Cairene women's baths. It is clear, from this internal evidence, that it must have been before the British occupation in the early eighties.

Frederick Smith did not long survive this journey. He died at the early age of forty-three —his death being traceable to weakness resulting from his service in the tropical heat of India— leaving his widow (who still survives) with an income of between £500 and £600 a year and a family of five children—three sons and two daughters— of whom "F. E." was the eldest.

His untimely death undoubtedly cut short a great career. He had brilliant prospects at the Bar—a fact to which Lord Mersey might be cited as a witness. The late Sir A. W. Dale, the Vice-Chancellor of Liverpool University, once told an acquaintance that "Fred Smith was one of the most remarkable men I have ever met." He would certainly, had he lived, have been the next M.P. for Birkenhead, and would unquestionably have made a name in Parliament.

More than a quarter of a century later his son prefaced the fifth edition of his volume on *International Law* with this dedication:

"I dedicate the fifth edition of this work to the memory of my father, Frederick Smith, who fought

with distinction, as a non-commissioned officer, in the battles of his country, and afterwards commenced a career of singular promise at the Bar, which was unhappily terminated by his premature death at the age of forty-three."

At the time of his death young "F. E." was seventeen. He had left a preparatory school at Southport for Birkenhead School, which he entered in 1887, at the age of fifteen. There, if the accounts of contemporaries may be credited, he already showed fighting qualities. On one occasion, it is stated, he was reprimanded by a master, whereupon he rose to his feet in front of the class, pointed a menacing finger at the usher, and cried: "I do not accept your view, sir, and I challenge you to prove that I am wrong." He became, however, head of the school, and also distinguished himself at football, running, and, like his companions, at sailing a small boat on the Mersey.

The headmaster was the Rev. A. Sloman, the editor of Terence, a former president of the Oxford Union Society and Master of the Queen's Scholars at Westminster School. Four other boys and Smith composed the Upper Sixth Form; four of these, including Smith himself and C. T. Wood, who became a bishop, won fellowships at Oxford or Cambridge, while the fifth obtained an exhibition at Cambridge.

Young Smith had entered, at the age of thirteen, for a scholarship at Harrow. "In those days the examiners rejected what were known as 'half-wits' after two days' examination, thereby making it plain that these were merely cumbering up the ground to the embarrassment of really promising youngsters. I was among the half-wits." So, however, were Mr Amery, now Secretary of State for the Dominions, and Mr A. B. Ramsay, later the Lower Master at Eton and Master of Magdalene College, Cambridge—both brilliant scholars.

The death of his father made it essential that he should rely almost wholly on his own efforts for his advancement. "If I applied myself closely to my books," he has said, "it was certainly not from any disinterested love of them." The statement has been made that he won his classical scholarship at Wadham after only six months' special study. The scholarship was worth £80 a year, and with it he proceeded to Oxford in 1890. He might easily never have left the University again.

He had intended to compete for a scholarship at Balliol but, fortunately or unfortunately, an attack of neuralgia intervened. The next examination was that held jointly at Trinity and Wadham. Smith chose Wadham because, although it was the smaller college, it was the more beautiful. He was asked

in the *viva voce* if he was a candidate for an exhibition, should he not be chosen for a scholarship. He replied that he could not afford to go to Oxford, except as a scholar — which may, perhaps, have helped him somewhat with the examiners. His uncle, the late Mr E. P. Smith, promised him some small but generous assistance if he won a scholarship

He stayed at a temperance hotel at Oxford during the examination and while he was waiting for the result to be announced. If he had failed he would have entered for one more group of scholarships, but this would probably have been his last attempt, for the railway fare from Birkenhead and the hotel expenses were prohibitive.

He did not fail. His essay on the set subject, "Conventions: Their Use and Abuse," was said to be the best ever written in a scholarship examination at the College. "I can still see the old porter at Wadham, a veteran, I believe, of the Indian Mutiny, coming from the Warden's lodging—how slow he was!—with a sheet of paper. He opened a glass case—again how slowly!—produced four brass pins, and proceeded to pin up an announcement written in the scholarly hand of Warden Thorley, which I can see before me as I write, to the effect that the scholars elected at Wadham College as the result of the examination were, in the following order:

" C. B. Fry,
A. B. Willimot,
W. H. Anstie,
F. E. Smith.

"I was the junior of all four scholars, but I had won none the less an open classical scholarship, and whatever straits and difficulties lay in front of me, it was at least certain that I should have the opportunity of an Oxford career. I took the next train back to Birkenhead."

His arrival at Oxford coincided with a brilliant period. Wadham is one of the smaller colleges, but among his contemporaries at it were John Simon, Charles Burgess Fry, Sir Theodore Cook of the *Field*, Mr Justice Roche, and H. M. Giveen, now Junior Counsel to the Treasury. Simon has since become a great advocate, a leader of the Liberal party in its last and palmiest days, Solicitor-General, Attorney-General, and Home Secretary. Fry, also a Liberal, has never greatly distinguished himself in politics. His political career, like his speeches, has been all beginning and no end. He has stood as a Liberal candidate for Oxford, Banbury, and Brighton, but in vain. In athletics, however, he has won immortality. He was captain of cricket and Association football and president of athletics at Oxford; he held for some time the

world's record for the long jump, and has represented his country at both cricket—his association with "Ranji" will never be forgotten—and football. He was the handsomest man of his day at the University and one of the most influential.

These three young Wadham men—Smith, Simon, and Fry—were close friends. Smith was president of the Union in 1894, Simon two years later. There is a silly story that these two tossed up to choose which party each should join, since it was inconceivable that any political organisation could offer sufficient opportunities for both. Those who repeat this legend forget that Smith had already made his mark as a Conservative in the Union before Simon appeared. They forget, also, that the temperaments of the two men are so different as to make it impossible for either to have adopted a different political complexion. So shrewd a political observer as Lord Beaverbrook once in more recent days affected to detect a Liberal trend in Lord Birkenhead. Lord Beaverbrook is Liberal at heart, although he may not know it, and this doubtless projected the illusion into his mind. He failed, as many others have done, to credit Lord Birkenhead with political integrity. He showed himself, in short, more Liberal than generous.

Besides this Wadham triad, other stars brightened the University heavens. Lord Hugh Cecil,

Lord Beauchamp, Lord Balcarres, Mr Hilaire Belloc, and Mr F. W. Hirst, the economist, were others destined to take their place in the political and intellectual front of the nation.

The arena where these young gladiators met was the Oxford Union, then at a crest of its career. Smith's maiden speech in the Union—which, by the way, he did not make until his second term—made as great an impression there as, fourteen years later, his maiden speech in the House of Commons was to make in a larger field. The rule in the Union is that four speakers, two on each side, are invited by the President. Their names are printed "on the paper" and, after they have spoken, the debate is open to the rest. As a rule, no undergraduate can hope to find his name "on the paper" until he has made his mark in earlier debates. Smith, as usual, was an exception. Mr C. H. Eliot, son of the late Dean of Windsor, and an ex-secretary of the Union, happened to hear Smith speak in the Wadham Debating Society; his recommendation persuaded the President of the Union to invite Smith to oppose a motion of Lord Balcarres in favour of Local Option.

The guest of the evening was the late Sir Wilfrid Lawson, the wittiest speaker of the Prohibition movement in the country and its principal advocate in Parliament. Smith was to speak immediately

before him on this fateful evening of March 17, 1892, to a gathering which, as always when a distinguished guest was present, was much larger than the ordinary Union attendances.

It was known—and much appreciated by his fellow Prohibitionists—that, when Sir Wilfrid had succeeded to his father's baronetcy and estates in 1867, his first act was to open the cellars of his Carlisle mansion and destroy the valuable stocks of wine.

Smith rose to speak against the motion. He reminded his listeners of Sir Wilfrid's vandalism. "What did the honourable gentleman do with his cellar?" he cried. "He destroyed that priceless heritage of ages, that treasure-house in which was stored the bottled sunshine of the South—he destroyed it under circumstances of such barbarity that even the most thirsty throat in Carlisle was denied participation. I tell you, Sir, that in years to come, when I am lounging in Abraham's bosom, and the honourable gentleman begs me to give him a cup of water, I shall say to him, 'No, not a drop! You dissipated greater liquor.'"

The picture of the dashing "F. E.," then nineteen years of age, lounging in Abraham's bosom was too much for the staid temper of the Union. A shout of laughter lasted for a full five minutes, and laid the foundation of his triumphant career

in that body, which culminated with the rare honour of unopposed election to the presidency after the exceptionally short period of two years.

The undergraduate Press was enthusiastic about this maiden speech. "It is long indeed," said the *Oxford Magazine*, "since the House has listened to a maiden speech of such power, conciseness, and brilliancy." And the *Isis* declared that "the speech of the evening, with all respect to our guest, was the amazingly vivacious and brilliant performance of Mr F. E. Smith, the Wadham freshman." The speaker has himself since written that "the success of that evening marked an epoch in my life. I was thereafter satisfied that I possessed a power of speech which, if sustained and developed, must lead me along one path or another to some degree of eminence in the State."

Smith's next appearance "on the paper" was on May 5, 1892, when he moved that "this House disapproves of all Canvassing in connection with Political Elections." His name occurs frequently in the debates from that time forward, and he became Junior Treasurer of the Union in the autumn of the following year. He is to be found moving votes of censure on the Liberal Government, agreeing that "this House would view with horror the prospect of a Teetotal England," refusing to "regret that the 'Good Old Times' have passed,"

insisting that "Sweet are the uses of Advertisements," moving, *mirabile dictu*, a motion in favour of the Disestablishment of the Welsh Church, but excluding disendowment, and, in what was apparently his last important speech of this period, moving the adjournment on May 19, 1898, in view of Mr Gladstone's death. This tribute to Gladstone is so mature in its style and so characteristically eloquent of the speaker—the very words are almost those he would use in similar circumstances to-day—that I have thought well to reproduce it here in full:

"I rise to move, with the brevity proper to such an occasion, the following motion: 'That in view of Mr Gladstone's death, this House do adjourn.'

"When I look round, Sir, at this House—at these benches crowded on every side, at the gallery full of our friends and guests—I am conscious of one feeling and one only, a feeling of profound satisfaction that chance has put it in our power to-night to make a sacrifice—not the small sacrifice of our own but the great sacrifice of our friends' pleasure—to prove the sincerity of our sorrow for Mr Gladstone's death.

"The circumstances of our assemblage to-night are not wanting in the element of dramatic contrast. Out of courtesy to our guests who, by a curious convention, are supposed to be averse from serious

discussions; out of concession to a week always given over to lightness, the subject of our debate to-night was of an altogether trivial character. We came here with jests upon our lips, and they have been frozen before they could find expression by these tidings of death. Certainly I shall utter the feeling of the House when I say that we must all be acutely conscious of the impropriety, the impossibility at such a time of such a debate.

"Within the walls of this assembly more than of any other, with the single exception of Westminster, is the rare tribute we shall pay to-night an appropriate one; and in one sense we shall not even yield up our claim to the House of Commons. We cannot forget that if the splendid maturity of his life was theirs, ours and ours alone was its brilliant dawn, and our claim to mourn over its pathetic end is not less.

"Nearly seventy years, Sir, have passed since Mr Gladstone sat in the chair you fill to-night. He enjoyed, in the discharge of your office, a wealth of contemporary reputation, to which I conceive that none of his successors has even approximately attained, and during those seventy years all parties in this House have admitted him, with ready assent, the most illustrious ornament in the annals of the Society. Other great statesmen, Sir, have sat since Mr Gladstone in your chair; there have debated within the walls of this Society poets like Swinburne,

known where the English language is known, men of letters like Ruskin, and a long roll of prelates and judges, the mere recital of whose names would exhaust the patience of the House, yet I think it was said of none of these, as it was said of Gladstone, the undergraduate, 'A man is risen in Israel this day.'

"In public some of us have exercised, from time to time, our wit and rhetoric against him, but in private, when we would give a high impression of this Society to those unfamiliar with its history, it was the name of Gladstone which rose first to our lips. There are times, and this I think is one, when we who have busied ourselves, in however inconsiderable a degree, with party politics are glad to say with Mercutio, 'A plague on both your Houses'—when the desire is strong within us to express sorrow with more than the perfunctory courtesy of political opponents. We remember that these last seventy years have been pregnant with changes in our national life—social changes, political changes, economic changes. Of these Mr Gladstone *pars magna fuit*, and the part he played was always distinguished, always strenuous, always single-hearted. When we think that after the stress of those anxious years the tired body and the busy brain are still, we can think of no better epitaph for him than the words, 'After life's fitful fever, he sleeps well.'

"We are all proud that so distinguished a personality should have gone forth from our midst, but we are prouder far of the public high-mindedness and the private conscientiousness, which the wearer of it never lost. And we are proud, too, not only of the composure with which Mr Gladstone met death—for the nature of his religious convictions made that composure certain—but of the dignity and fortitude with which he supported the tortures of acute physical pain. All of us were glad to associate ourselves with the letter of sympathy which the Vice-Chancellor, the mouthpiece of this University, wrote to Mr Gladstone. I am sure that all of us read the reply with feelings of profound emotion. I remember the words of it: 'There is no expression of Christian sympathy that I value more than that of the University of Oxford, the God-fearing and God-sustaining University of Oxford. I have served her, perhaps mistakenly, to the best of my ability. My most earnest prayers are hers to the uttermost and the last.'

"I think there is no one in this House, whatever be his own religious belief, whatever his view of the efficacy of prayer, who will not be moved by the thought that the prayers of such a man, at such a time, were given to this University. Sir, I beg leave formally to move the motion, 'That in view of Mr Gladstone's death, this House do adjourn.'"

For a youth of twenty-five this speech was phenomenal. It was seconded, by the way, by John Simon, whose earliest incursions into politics may also be traced in the records of the Oxford Union Society—his first appearance "on the paper" was, it is interesting to note, in opposition to a motion that "this House does not sympathise with the attitude of the Miners in the Coal Strike" (November 2, 1893). Smith's next formal speech in the Union was in 1907, when, as a man high in the councils of the Conservative Party, he supported Viscount Wolmer in denying confidence to the Liberal Government. Four years later he spoke in the Union on a similar motion, moved by Mr A. P. Herbert, now a brilliant contributor to *Punch*. On both occasions he drew enormous audiences.

Belloc and Smith were rivals in the Union from the beginning. Belloc dominated the whole Liberal Party at the University, and John Simon was his lieutenant. Smith dominated the Conservatives. Both he and Belloc were clever speakers, as conversant with the methods and devices of rhetoric as they are to-day, although experience has polished their periods. On one notable occasion Belloc introduced a motion that undergraduates should be represented in the government of the University. Such representation, he urged, would be a conduit and a drain—he undoubtedly said "dwain"—for

the energies of youth. His peroration envisaged the University as "some high, vast, lofty, well-proportioned cathedral." Smith, opposing the motion, first made his points, and then concluded with a mock peroration: "When I contemplate the scheme of the honourable member of Balliol, I see it as a high, vast, lofty, well-proportioned—drain!" He carried the day, and Mr Belloc has not yet really forgiven him.

Smith would enter the Union in a frock-coat—the only man, dons excepted, who ever dared on this sartorial indulgence—having usually just arrived from the station on his return from a visit to London. Within five minutes he would plunge into the debate, and his arguments and his air of conviction carried many votes. So at least Mr Keble Howard, the novelist, states.

Apart from these political delights, Smith devoted himself to the study of law. "My life has been passed," he told a body of Liverpool students a dozen years later, "in such circumstances and under such necessities that I hardly remember a time when I have not had to work ten or eleven hours a day. Much as I detest work, I happened to be born in such circumstances as made it necessary that I should work or starve. I know of no more persuasive inducement to work. I early arrived at the conclusion that, since un-

F. E. Smith at the Age of Two

F. E. Smith at the Age of Seven

fortunately one had to work, it was on the whole worth while to work really hard and achieve some substantial result." The result at Oxford was extremely satisfactory.

He took a first-class in jurisprudence in 1894, and became Vinerian Law scholar in the following year.[1] He defeated in the Vinerian Law scholarship examination a man universally admitted to-day to be the most learned academic lawyer in England, Professor W. S. Holdsworth, Fellow of All Souls, formerly Fellow of St John's and Vinerian Professor of English Law in the University of Oxford. Professor Holdsworth is well known as the author of the most scholarly work, extending now to some nine volumes, on the history of English Law. At the time of the 1894 examination the professor had already an academic record of exceptional brilliance. He waited for his revenge upon Smith for nearly thirty years, and then, in a fine spirit of generosity, dedicated his monumental history of English Law to him.

[1] The late Sir William Anson, the foremost authority of his day on constitutional law, examined him for his Final Schools. Sir William lived long enough to be able to express enthusiasm in his diary about Smith's speech in the House of Commons on the Irish question on March 30, 1914. "F. E.," he wrote, "made the best speech, I think, I have ever heard from him. He tracked the plot very conclusively and very temperately. Winston replied, again violent and not effective."

In 1895 Smith was appointed fellow and lecturer of Merton College, where he remained in residence for two years. The rest of his scholastic career may be summarised. He became lecturer of Oriel in 1897, University extension lecturer in modern history in 1898, examiner in final schools at Oxford in 1899–1900, and extension lecturer in modern history at the Victoria University, Liverpool, in 1900. He displayed almost equal brilliance in history and in law. He took for his particular subject the Stuart period, and those who attended his lectures claim that no one has ever treated those critical times more excellently. He is still ambitious to write an account of the last phase of Charles I after his final defeat by the Parliamentarians. Napoleon was, and remains, another of his favourite themes. Simultaneously he gathered materials about Dr Johnson, and he long ago wrote a book—never yet published—about Johnson's poems, which may be taken as a preface to a more considerable project. He began also to make a collection of speeches of all periods, which, lovingly augmented, is to-day perhaps the most complete in existence. His first published work—an inconsiderable one—appeared in 1890, being a translation and acting version of Plautus' *Mostellaria*, for the students of Liverpool University; it was made in collaboration with Mr L. D. Barnett, now Keeper of

Oriental Printed Books and Manuscripts at the British Museum, and entitled *The Haunted House*. He was then only seventeen.

It was not easy for the ambitious young man to pay his way at Oxford. His stipends were meagre, and he could not expect large additions from his family. When he took his degree he was several hundreds of pounds in debt, but he paid this off within two years. Debts did not worry him; was he not known at Oxford as "Don't-care Smith?"

He had, however, to look about, especially in the vacations, for methods of supplementing his funds. Tutoring was a means, and on one occasion he inserted an advertisement in a Scottish newspaper offering his services in this capacity.

A week later he was handed a telegram addressed to "Smith, Wadham College, Oxford," and offering him a three weeks' engagement in the Isle of Skye. It contained also the curious inquiry whether he had a suit of evening-clothes. He was asked to telegraph his reply. In doing so the undergraduate accepted the engagement, agreed to bring dress-clothes, and ventured to inquire what the terms would be. The cryptic reply came: "Usual terms."

The fare to Scotland was a considerable item, but Smith borrowed the money and arrived at

the address. He was surprised to find it a hotel, the proprietor of which was his correspondent. It is unusual for hotel proprietors to engage tutors, and Smith decided that the man probably required his services for his son. The innkeeper, however, asked him point-blank, "What experience have you had of waiting?"

The mystery was explained. The original telegram had been sent, not in reply to Smith's advertisement, but to a college servant of the same name who was accustomed to supplement his wages by acting as a waiter at seaside hotels in the summer. The undergraduate made the best of a bad job, and spent three weeks in philosophic fishing.

During another vacation he saw an opportunity for an inexpensive holiday by sailing as a passenger in a windjammer bound for Vancouver. The weather was unpropitious, and the vessel fought for two months to round Cape Horn. Smith was the only passenger, and his supplies of tinned food and pipe-tobacco—he could not then afford the cigars which have since endeared him to caricaturists—were soon exhausted, a large portion going to the overworked officers of the vessel in the not altogether successful attempt to maintain friendly relations. The dividing line between passenger and ship's company wore thin as the long

voyage ended, and Smith would certainly not have needed more than another month's work to take a master's certificate. It is now one of his keenest regrets, as a yachtsman, that he for once failed to rise to an opportunity.

Sport meanwhile was not neglected. Smith was tried for his University at Rugby football, and, but for breaking his arm on the fifth occasion he played for it, would undoubtedly have been given his blue. He also played much lawn-tennis. He and C. B. Fry are the traditional founders of the Wadham Cat Club, the qualification for membership of which is the capacity to climb out of Wadham, through St John's and Trinity into Balliol and back again, without disturbing the Wadham porter. The names of the two original "cats" are still celebrated in the anthem of this intrepid club.

During one Long Vacation he slipped at a political gathering and badly poisoned his arm. He had a leather sheath made for his elbow and, packing it with cotton-wool, played Rugby with remarkable pluck and ability, leading the Wadham forwards, among whom a "rosy-faced, curly-headed, blue-eyed gentleman,"[1] John Simon, was included. He persuaded Fry to play Rugby, and was in turn initiated by him into the Association game. "I told

[1] Mr C. B. Fry's description.

him," says Fry, "that he could not be worse than some of our eleven, and would in any case be useful to argue with the referee, and to draft protests." He became a useful half-back.

For a bet of £50 he undertook, at the age of twenty, a non-stop walk from Birkenhead landing-stage to Llandudno pier, a distance of sixty miles. He accomplished this in fourteen hours, at an average speed of four and a quarter miles an hour.

Mention should not be omitted of the fact that Smith is reputed the only Oxford man who has ever suffered incarceration as both an undergraduate and a don. A contemporary has publicly stated that he and Smith took part in certain exuberant incidents attending the opening of the new Oxford town-hall in 1897 by the Prince of Wales, later Edward VII, and subsequently fell into the hands of the police. "I escaped through the agility of my legs," said this chronicler; "F. E., I believe, escaped by the eloquence of his pleading."

There is much more to it, however, than is revealed by this bald statement. The Prince's visit was marked by a riotous undergraduate "rag." The mounted police, unfortunately, lost their heads and charged the crowd, dealing blows indiscriminately at the guilty and the innocent. Smith, then a young don, happened to be passing and saw policemen attacking one of his college servants,

an elderly man. He intervened and was duly arrested, calling upon a group of friends at an overlooking window to witness that "I am going quietly." For a don to be lodged in the cells is sufficiently unusual to attract general interest. In court next day the policemen alleged that Smith had kicked their ankles when they arrested him, and he called his friends to disprove this. Their testimony and a formidable array of witnesses to testify to his character secured a triumphant acquittal, and he became a popular hero. As we shall see in the next chapter, this incident played a very important part in his life.

As undergraduate, scholar, don, athlete, and alumnus, no man ever liked Oxford better and few have been so well liked there. Smith exercised on his contemporaries in the University the charm which has since opened so many doors to him. To illustrate this rare quality, an episode of a dozen years afterwards may be mentioned without regard to its chronological place in this study.

When Lord Rosebery, the veteran Liberal statesman, retired from active politics, he invited Miss Maxine Elliott, the actress, to lunch with him once a year, and to bring a friend with her on these occasions. One year, soon after Smith's Parliamentary debut, she asked him to join her in this

annual meeting with the ex-Premier. She knew that Lord Rosebery would gravely disapprove her choice, if he were forewarned, for, in view of Smith's vigorous speeches in and out of the House of Commons, he was then regarded by the Liberals as an unprincipled political filibuster. Without, therefore, advising her host of her companion's identity, she confronted the two at the lunch-table. After the first surprise wore off, the old gentleman found himself melting to the conversational overtures of Smith, who was at his most charming. The end of the meal found the two men, one at the close, the other at the beginning of a great career, mutually delighted with each other's acquaintance. The friendship thus formed was cemented years later when Smith became the close and dear companion of Lord Rosebery's favourite son, Neil Primrose, and wrote an eloquent and moving obituary of him in *Points of View*.

Much of the Oxford manner, as it is called, still survives, perhaps, in Lord Birkenhead's appearance and his speech. In recent years he has given evidence of his affection for Oxford by spending considerable time and money in making his country house at Charlton approximate in appearance to a small Oxford college. The temptation to remain permanently at the University must have been very great, for he was certain of a distinguished

academic career and of a comfortable existence. Had not the lure of ambition triumphed, Oxford to-day might be the richer for a learned Professor F. E. Smith, and the world the poorer for an Earl of Birkenhead.

CHAPTER II

THE early adventurous decision to sacrifice academic ease for the glittering prizes of the Bar and politics has been a thousand times justified by success. But the smile of fortune was not at once given. Smith was admitted a student of Gray's Inn on November 20, 1894. It is related that, when he attended his first dinner in the Hall of the Inn, he was incited by the other students, after the Benchers had left the Hall, to ask permission to smoke. He rose and said, as he had been prompted to do, "Mr Senior, may we smoke?" The "Mr Senior" of the occasion thought the request premature and replied tartly, "No, you may not!" Whereupon Smith, unaccustomed to such rebuffs, rose again and asked, "Why not?" to which audacity no reply was returned by astonished authority. He was called to the Bar on June 14, 1899, being bracketed second in the first class. He then joined the Northern circuit at Liverpool. "There is one point of identity," he remarked years later at a Press dinner, "in the professions of the Bar, the stage, and journalism: in any one of these a young

man can start without any capital. At the Bar the parsimony of our Inns of Court has established the necessity of paying some paltry charges—which, nevertheless, I had to borrow money in order to pay when I was a beginner—but, when once these are discharged, all you have to do is to pay some old and preferably declining barrister to allow you to paint your name on his door, and beyond that very little capital is needed." So far as he himself was concerned, however, he had no need to follow this advice throughout, since he had the advantage of entering Mr (now Sir) Leslie Scott's chambers in Cook Street, Liverpool.

He met Scott, who was three years his senior, at Merton College one day in 1898, spoke to him appreciatively of some articles on maritime law in relation to commerce that Scott had contributed to the *Law Quarterly Review* and arranged to enter his chambers as a pupil. Scott has since confessed that he was a little frightened of this brilliant, forceful young man.

Then, like other young barristers, he sat down to wait for briefs. He never knew—perhaps he does not know to this day—how coolly received he was by the other juniors at Liverpool. Their corporation was a close one, and they did not feel inclined to welcome this dashing young man from Oxford with open arms. But before very long

they realised that they were in the presence of a master, and their coolness changed to admiration, not unmixed with envy. From the moment he first attracted public notice he drew briefs to himself in a manner that must have made many of his colleagues fear for their own livelihood. It was with sighs of relief as well as of regret that they watched him migrate to the greater glory of London seven years later, leaving them once more in possession of the field.

They were nevertheless a brilliant company. Besides Scott, Mr Justice Greer, Judge Tobin, Mr Justice Rigby Swift, Judge Thomas, Judge Maxwell, Mr A. G. Steel, K.C., Mr Collingwood Hope, K.C., Sir Lancelot Sanderson, and Mr Greaves-Lord, K.C., were all practising at this time in Liverpool; and the neighbouring Bar of Manchester was almost as well manned.

Smith quickly fell into the spirit of the circuit mess. He was usually prepared to play cards half the night, but was always ready, thanks to his magnificent constitution, for work—hard work—next morning.

At first, however, briefs did not come with noticeable speed. He had no influence with litigants and no opportunity to display his talents. His first brief reached him under somewhat romantic circumstances. It was in itself quite unromantic, being the application of one Mary Alice M'Kanny,

a client of Messrs John Wall, of Wigan, for a licence to sell intoxicating liquor. It reached his office at the end of August 1899, during the Long Vacation. Scott had gone on a holiday to Switzerland; all his life he has taken this annual holiday, and allowed nothing to interfere with it. When, therefore, he received a telegram from a solicitor asking him to plead a score of licensing briefs, he replied that he had no intention of returning and advised giving them to Smith. The solicitor sent round the one as an experiment.

But Smith, too, had slipped away to spend a few days in Devonshire to see the lady who was afterwards to become his wife. The telegram from his clerk announcing the arrival of the brief was handed to him soon after he reached her house, and he immediately drove back to the station—greatly to his own chagrin and that of the young lady—and took the first train to the North.

For this brief he received five guineas, with an additional guinea for a conference. He pleaded the brief brilliantly, and others soon followed. It may be of interest to set out his earnings in this first year:

August 29, 1899 . . .	£ 6	6	0
September . . .	13	13	0
October . . .	14	14	0
November . . .	2	2	0
December . . .	13	13	0

This makes a total of forty-eight guineas for 1899! One cannot grow very rich at this rate, and Smith occupied his unwelcome leisure by writing a little book on International Law, which, first published in 1900 in the "Temple Classics" series, remains a model survey of a large and complex subject. For this book Smith received a cheque for £60, and, with this princely sum in his pocket, he proposed to Miss Margaret Furneaux, the second daughter of the late Professor Furneaux, the well-known Latinist of Corpus Christi College, Oxford.

This lady was lineally descended from the ancient family of Furneaux, to whom has belonged the small manor of Swilly in Devonshire from the days of the Norman Conquest and who have contributed to the history of England many well-known soldiers and sailors, the latter including Captain Tobias Furneaux, the second in command of Captain Cook. On her mother's side Miss Furneaux was the granddaughter of that Joseph Severn, the artist, who painted all the most important extant portraits of Keats and in whose arms the poet died. Their graves lie side by side close to that of Shelley in the British cemetery at Rome.

From her family her husband later took his second title of Viscount Furneaux, which is given to-day by courtesy to his son.

Miss Furneaux, now the Countess of Birkenhead, must have had a sense of adventure equal to her suitor's, for she accepted him. She had first heard of him at the time of his arrest during the Prince of Wales' visit. Just home at Oxford from school, she was impressionable enough to appreciate his chivalrous attempt to rescue his old servant. But their first meeting came later.

A mixed hockey match had been arranged, and Miss Furneaux learnt with disgust that a don had actually been invited to take part. "Why ask a frowsty old don?" was her comment. The don, however, was Smith, who, playing a game of extraordinary roughness and disregard of his own and everybody else's personal safety, demonstrated sufficiently that he was neither old nor frowsty.

Their acquaintance developed, and Professor Furneaux was approached for his consent to an engagement. He told his daughter that she was too young to know her mind. "They tell me he is a rising young man," he added; "I have met so many rising young men, and they never seem to rise. But he is certainly very extravagant."

He and Smith became good friends, however, and before Professor Furneaux died he had given his consent to their engagement, and they were married in 1901. (Thirteen years later, as if to bear witness to the success of this union, "F. E.'s"

brother, the late Sir Harold Smith, married a younger sister of Lady Birkenhead.) It is related, by the way, that the first thing the young fiancé did was to purchase a couple of hunters, which left him temporarily penniless. Two more horses were added to these at the earliest opportunity, and once again the young couple's funds were exhausted.

The little book on International Law was not his first original publication, for in 1897 he had written a small volume on Newfoundland, a country of which, however much it might arouse his sympathetic interest, he could hardly claim intimate knowledge.

We have seen that he allowed nothing to stand in the way of his work, and we find him spending every month of 1900 in his chambers, with the exception of March. Here are his receipts for eight months that year:

January	£29	8	0
February	33	12	0
March	..		
April	5	5	0
May	22	1	0
June	15	15	0
July	43	1	0
August	34	13	0

Thus, in his first twelve months of actual pleading he made £234, 3s. The figures for the four remaining months of 1900, however, show a remarkable increase:

September	£141	15	0
October	101	17	0
November	72	9	0
December	29	8	0

The reason for this advance is that Smith was beginning to make a name in relation to licensing applications. In those days the Licensing Sessions were held in September and October, so that most of the briefs came at a time when many barristers were on vacation. Smith, however, chose to stay at work—it is noteworthy that for part of September his very clerk went away, leaving Smith to make the entries in his own fee book—and, although licensing briefs called for little legal knowledge, they necessitated powers of persuasion and helped to introduce the young barrister to the public and the Bar.

The statistics of his earnings for the first eight months of 1901 again show a much higher achievement:—

January	£ 63	0	0
February	234	3	0
March	99	15	0
April	69	6	0
May	102	18	0
June	103	19	0
July	84	0	0
August	101	17	0

In his second twelvemonth, therefore, he earned no fewer than 1147 guineas, or a trifle over £1200 —an excellent record which few young barristers then or now could equal. He was, in fact, making a name for himself.

He was in those days, as afterwards, most scrupulous of the etiquette of his profession, a matter of no little difficulty in a provincial town where a lawyer must meet actual and possible clients at every turn. It is related of him that, if he met would-be litigants at dinner or on other social occasions, he would deftly set aside every attempt they made to discuss their troubles with him, but would nevertheless leave them convinced that, if there was one man in the world capable of conducting their case as it ought to be conducted, F. E. Smith was that man.

At the same time he was never guilty of sycophancy towards important and most desirable clients.

He was always independent, and even in his earliest days of practice as an unknown barrister he justified his Oxford nickname—"Don't-care Smith"—by telling his astonished clerk to return some briefs to an influential but somewhat overbearing firm of solicitors who had ventured, in his opinion, to transgress the limits of professional courtesy.

Even in those early days expert eyes noted his promise. There stands framed on the mantelpiece of his library at Grosvenor Gardens to-day a note passed to him by Lord Alverstone, the Lord Chief Justice, before whom he had been pleading on an infrequent visit to London:

November 20, 1901.

Dear Mr Smith,

You argued this case admirably. I predict for you a very brilliant future. I trust we shall often see you.

Faithfully yours,

ALVERSTONE.

That Smith's eloquence and ability would eventually have brought him success is not to be doubted, but the tide of his affairs was turned by a remarkable stroke of luck. He was briefed in a trumpery county court case, which he was winning without difficulty. To soften the blow for the other side, he ventured to pay a compliment

to the skill with which his opponent's solicitors had prepared their case. So grateful was the junior partner in that firm, whose particular charge this had been, that next day he persuaded his firm to retain Smith's services. This led to his being briefed in the Ogden Guinea Gold litigation—a dispute in the tobacco trade which provided him with well over a thousand briefs, and brought him, as the price of considerable but under the circumstances grateful work, nine or ten thousand pounds.

He was recognised by every lawyer as extremely quick at grasping the essential facts of a case and the most appropriate methods of procedure. This gift has been the chief source of his success in every branch of his career.

He had the gift of so marshalling his case that it would persuasively appeal to the particular person or persons to whom it was addressed. No one, on the other hand, could give offence with more facility. A barrister's clerk one day said to him, in reference to a successful speech he had delivered: "I have been reading your speech, Mr Smith, and I don't think much of it." "I don't think you would," replied Smith meaningly, and there was a certain inflection in his use of the word "You" which caused the other man to collapse. This trivial episode, be it noted, has remained fresh

in the memory of at least one busy lawyer, even after the lapse of a quarter of a century.

He had not missed any opportunity to enlarge the sphere of his experience. A great chance came when he was briefed for the defence of Goudie, the principal defendant in the famous Liverpool banking frauds case. Goudie was a young bank clerk who had fallen into the hands of two unscrupulous sets of racing pests. They bled him white, and, to postpone exposure, he carried out a series of ingenious embezzlements on an unprecedented scale. Every penny that he stole went to his blackmailers. The scheme collapsed at last, and Goudie and his persecutors were tried at the Old Bailey in London in 1902. Goudie pleaded guilty, and there was nothing for his counsel to do but to ask for mitigation of his sentence. This Smith did so eloquently that his speech attracted as much attention at the London Bar as his maiden speech had done in the Oxford Union and, a few years later, his maiden speech in the House of Commons.

There was loud applause in the court when he sat down. The late Sir Richard Muir, the counsel for the prosecution, passed him a note in court which read: "You will be the master of all of us. No one I have ever heard has impressed me so much in a hopeless case." Mr Justice Bigham was

sufficiently impressed by Smith's pleading to alter an intended sentence of fourteen years to one of ten years' penal servitude. The newspapers next day were as appreciative as the crowd in court, and this speech was Smith's first step towards the conquest of the London Bar.

Lord Birkenhead has himself told the story of the Goudie case and the Ogden Guinea Gold litigation in his recent volume of *Famous Trials*. There is no need, therefore, to describe them again, although one or two details may be added to his account. Goudie did not live to benefit by his reduced sentence, but died in Parkhurst after serving half his time. The other principal defendant, Dick Burge, the boxer and a brother-in-law of Marie Lloyd, the comedienne—he had married her sister only three weeks before his arrest and imprisonment—received the same sentence. He was released in August 1909, after seven and a half years, having won every possible mark towards remission by good conduct, and, as well, by a notable act of bravery in protecting a warder from the murderous assault of another Portland prisoner. He returned to the ring as a manager of prize-fights, and joined the boxers' battalion in the War. One of the other criminals succeeded in escaping from the country, but was arrested by the New York police in 1906. The British authorities,

however, did not wish to reopen the case, and he was released.

Smith was briefed for the prosecution in the sensational murder trial which followed the death of John Kensit, the anti-ritualist, at Birkenhead in September 1902. Kensit had addressed a mass meeting of Protestants in one part of the town and was being escorted by the police to a tramcar on which he intended to reach the ferry to cross to Liverpool. As he alighted from the car an iron bar, which is still preserved in Lord Birkenhead's chambers, was thrust into his eye, causing severe wounds. He died a few days later, and was solemnly described by his admirers as "the first Protestant martyr of the twentieth century." The young Irishman who was tried for his alleged murder was acquitted.

In August 1904 Smith opened another legal connection that was destined to exert an important influence on his career. He appeared for the British and South American Steam Navigation Company in a petition of right arising out of the South African War. The amount involved was £108,000. The chief director of the Company was Mr (later Sir) Robert Houston, the wealthy and powerful shipowner, whose friendship and interest from this time were valuable assets to the young barrister. The close friendship between

the two men continued until Sir Robert's death in 1926, when considerable public surprise was shown that his will, which was understood to be drawn up in Smith's favour, was found to have been re-made and to contain no bequest to him.

It was now time to think of a seat in Parliament. Smith had made his first public political speech when he was still at Oxford. It was in Liverpool at a Conservative demonstration in Hope Hall, on May 9, 1894, with Lord Dudley as the principal speaker. Smith, one of several novices who were offered an opportunity to win their spurs, was put up to make a ten-minute speech, but with characteristic aplomb he spoke for nearly an hour. I have succeeded in unearthing a report of his speech in the columns of the *Liverpool Courier*, that admirable newspaper, and I reproduce it herewith. It does not seem to have been an elevated flight of oratory —it was, of course, a partisan speech to a popular audience—but the report shows that it was an extremely successful one:

Mr F. E. Smith, in seconding the resolution, delivered a speech of great eloquence and humour. He congratulated the meeting on the presence there that evening of Lord Dudley, to whom the liberty and independence of the working man was dear, and their thanks were due to him for the courageous effort he made to maintain that liberty and independence. That attempt failed, and it failed because the Government decided to sacrifice a valuable

measure in order to swell the volume of bogus agitation against the House of Lords. (*Applause.*) But rely upon it, they had not heard the last of the Employer's Liability Bill. (*Hear, hear.*) It was a Unionist Government which first gave them legislation recognising the principle that an employer should compensate his injured employee, and it would be for that Unionist Government to which they believed the country was about, at an early date, to give a mandate—(*Applause*)—to build the edifice upon the foundation which they themselves had laid down. (*Hear, hear.*) Let them rely upon it, the underlying principle of that measure would be clear and unmistakable. This was the message which such a measure would convey to the working classes in England:—If their employer had not already done so, they would compel him to compensate his workmen for injuries they had received in his service; but if his generosity had granted them terms better than the Unionists could exact, they would permit them to avail themselves of them.

Alluding to the representation of Liverpool, the speaker said it was true that two of the goats of Liberalism still lurked among the sheep of Conservatism. (*Laughter.*) They relied upon Mr Bigham at an early date to deal with Mr Neville—(*Applause*)—but the presence of that disinterested patriot, Mr T. P. O'Connor—(*Oh!*)—conveyed to them a perpetual reproach. It was their desire and Mr M'Cartney's intention—(*Hear, hear*)—to relieve that gentleman, at an early date, of his parliamentary duties. (*Laughter and applause.*) They would set him free to devote all his time and such talents as God had given him to that journalistic literature of which he was so conspicuous a degrader. (*Laughter and applause.*)

At the present moment they owed a profound debt of gratitude to those of their members who were there that

night. In the words of another, they had "lived laborious days." As the Psalmist put it, "they came fresh from the ceaseless strife of tongues." (*Laughter.*) They had laboured for hours which would have justified any body of men under heaven in agitating for an eight hours' day. (*Applause.*) What was the position of the Radical Party? They desired to set class against class with the object of deriving therefrom some electioneering advantage. Their motto was—"Attack and, if possible, destroy every institution which is attached to your political opponents. Perpetuate and exaggerate every anomaly from which you yourselves may derive a vote." That might be a convenient and profitable creed, but it was not the creed of statesmen or of a great political party. (*Applause.*) It was because the House of Lords were determined to resist such aims that they had earned such a debt of gratitude from the people. Lord Rosebery, who had marked his elevation to the premiership by a habit of giving his party away in his public orations—(*Laughter*)—stated the other day that the Scottish Church was to be disestablished because it was Conservative. There they had the whole duty of the Radical Party stated by its leader. University representation was to be abolished because years ago Oxford showed its acuteness by passing Mr Gladstone on to a less scrupulous constituency. (*Laughter.*) Plural voting was to be abolished because it was not in harmony with democratic representation, regardless of the fact that there were far more serious blemishes upon our electoral system. The present Government were going to the country with the cry "One Englishman one vote, one Welshman one vote and a tenth, one Irishman three votes." (*Laughter and applause.*)

A measure of all-round reform would receive the thoughtful consideration of the Conservatives, but they would not permit the Government to jerrymand the English con-

stituencies. Their opponents alleged that the House of Lords opposed the people's will in throwing out the Home Rule Bill; but they did not think they would have carried out the people's will if they had carried out the Bill. This was the issue, and there was only one way of settling it—by placing it unclouded, without any side-issues, before the people. (*Cheers.*) But after the result of the Hackney election the Government were not likely to take that step. They would not appeal to the people, because the people were profoundly impressed with the idea of the necessity of the existence of a second chamber. (*Applause.*) What, he asked, would have been the feelings of the people if the House of Lords had passed the Home Rule Bill? Could they picture the consternation and the indignation of the betrayed people? (*Applause.*)

The Unionist Party, fortified by the lessons of the past, were marching on the future with hope, confident of the patriotism of the great democracy. They believed that the future of the country was secure in the hands of the people, who were able to measure their responsibility by their greatness. (*Applause.*)

The *Liverpool Courier* was sufficiently impressed to state in its leading article next day that "it is no reflection whatever upon Mr Long, Lord Dudley, or Mr Bigham to say that the sensation of the evening was the extraordinary performance of Mr F. E. Smith, an undergraduate of Wadham College. He made it indeed plain to all that the Conservative cause will not lack in the future new and brilliant exponents." After this successful debut, Mr (now Sir) Archibald Salvidge, the most influential man in

Liverpool Conservative circles, invited Smith to speak as frequently as possible. Smith did not fail to take advantage of this offer.

He was chosen at last, in 1904, as Conservative candidate for the Scotland division of the city. He appeared before the local party officials, it is not without interest to note, with his arm in a sling and his face badly bruised. He had ridden a few days before in a Bar Point-to-point on one of his own horses, which had thrown him at the water-jump. The next horse ran over him where he lay, broke one of his ribs, sprained his arm, and gave him severe bruises all down one side.

He spent six exciting months canvassing the division. There was, however, no hope of success in that predominantly Irish constituency against Mr T. P. O'Connor, who has represented it from 1885 to the present day. Salvation came in the beginning of 1905. The late Mr Joseph Chamberlain, the chief figure in the Conservative Party and the leader of the Tariff Reformers, among whom Smith already numbered himself, visited Liverpool in the course of his famous Tariff Reform campaign.

Smith was introduced to him at lunch and ventured to say in conversation, "Cannot you postpone the proposal to tax food until a moment when we are politically stronger?" Chamberlain snubbed the presumptuous young man. "My young friend,"

he said, "all these matters were deeply considered by me before I conceived and declared my proposals." He proved, of course, to be wrong and Smith to be right in their forecast of the response of the electorate to the food proposals.

Chamberlain spoke that evening to a large audience at Hengler's Circus. Sir Archibald Salvidge had to decide who should support him. It was impossible to choose any one of the local Conservative M.P.s without disappointing the others; moreover, Sir Archibald had already conceived a shrewd idea of the abilities of young Smith. So he, as the only Conservative candidate in Liverpool who was not in Parliament, was given the honour of following Chamberlain.

Smith has never failed to rise to an occasion. He spoke so well—he knew, better than anybody else, how his future might depend on this speech—that Chamberlain turned to Salvidge and said, "Who is this young fellow? He was arguing with me to-day. Who is he?"

"He is a young barrister named F. E. Smith, of whom we have a very high opinion," replied Sir Archibald, delighted by the success of his protégé. He told Chamberlain that Smith was standing for the Scotland division.

"Well," said the Conservative leader, "my advice to you is to put him into a seat he can win," and

after the meeting he said to Smith, "I've told Mr Salvidge that he must get you a safe seat. You will be returned to Parliament. Come to me in the House of Commons, and recall yourself to my recollection."

There were to be, as things turned out, few "safe seats" for Tories at the next election, but Sir Archibald followed Chamberlain's advice to the extent of transferring Smith's candidacy from the hopeless Scotland constituency to the neighbouring Walton division, the largest in the whole city. Smith now found himself on the threshold of the Parliamentary career he so greatly desired.

He threw himself whole-heartedly into the task of nursing the constituency, without, however, neglecting his legal work, which was now of considerable importance. He was no longer a poor man, and, instead of two hunters and no money, he had now a vast and ever-increasing practice, a considerable income, and a large house at Thornton Hough, Cheshire.

He found time, too, to go abroad, and in 1905 he was in Cuba and in the following year in Canada. His Cuban journey provided an entertaining incident, which was destined to have an even more entertaining sequel. A train in which he was travelling with his friends was stopped by a force of revolutionaries, engaged in what might

be called their annual insurrectionary manœuvres. "The conductor of the train," Lord Birkenhead publicly related twenty years later, "was an American, and, when the first rifles went off, he rushed in and said, 'Duck, you fools!' Though I do not claim special powers of observation, it did not escape me that, if the rifles had been really loaded, the glass of the windows would have been broken. As no glass was broken, it occurred to me that there was an opportunity for inexpensive heroism. We therefore continued our game, merely observing to the American guard, 'England dies, but does not duck!'"

The *Morning Post*, ever eager to attack Lord Birkenhead, printed two days after this speech a letter from another survivor of the courageous party, who stated that none of them had at the time noticed the revolutionaries. When they discovered afterwards what had happened, they entered into a friendly competition to see who could invent the most sensational account of what might have happened. Smith's story, declared this unbending lover of truth, had been the winner. I cannot help feeling that the *Morning Post* scored this time, but no one, least of all the victim, can begrudge it this infrequent experience.

Smith was back in England in ample time for the election of 1906—an unfortunate moment for

a young Conservative politician to make his debut. It was the year of the Liberal landslide; the rival party, by clinging too long to power, had made it possible for their opponents to secure an enormous majority. The Liberals did not scruple to take every means to improve their chances. Their "Chinese slavery" agitation swept through the country, and the carefully misrepresented labour conditions of a few quite unimportant coolies in South Africa provided the principal issue on which the British election was decided.

What made things worse for Smith was that, elections taking place then on different days, the disastrous results of the Manchester polling were known before the voting in Liverpool. The news of Mr Balfour's defeat brought consternation to the Conservative camp, but Smith, in a desperate attempt to hearten his supporters, placarded his division with the solemn and not uncharacteristic legend: "Is Balfour out? Then all the more reason for putting Smith in!"

The election was, of course, in times when motor-cars were scarce and horse-vehicles were employed to take voters to the polling-stations. Smith had then sixteen horses in his stables, most of them hunters. These, in anticipation of the election, were broken in to harness and, attached to every kind of conveyance that could be pro-

F E Smith at the Age of Nine

cured, were duly employed. Most of them had never drawn a carriage before and slithered and reared over the slippery surface of the streets. Little did the gratified passengers know that they were taking their lives in their hands in using the facilities offered them for the journey to the booths! Smith's groom, Rogers, of whom more will be said later, estimated that the hunters carried eight hundred voters to the poll. As his majority was 789, Smith held that his hunters had won the election for him.

Another fact which contributed to his success was the fact that the Liberal candidate, Mr E. G. Jellicoe (a barrister who, in 1908, went to South Africa to defend Dinizulu, the Zulu chief, on charges of treason), was almost unknown in the constituency. He and the Smiths stayed in the same hotel during the election, and Mr Jellicoe's loneliness was such that, in the evenings, after his meetings were over, he had no one with whom to sit or talk until Mrs Smith's maid and Smith's man took compassion on him. It is, indeed, a fact that, when one evening Mrs Smith rang for her hot-water bottle, she was told by her maid that "I've put it in Mr Jellicoe's bed; his poor feet are so cold." Mr Jellicoe was nevertheless a formidable adversary.

Smith raised his majority to 1114 at the next election, in January 1910, and to 1344 at the second

contest in that year. Then came the long War Parliament, and the armistice election of December 1918 found Smith fighting the rearranged Liverpool constituency of West Derby, for which he was returned by a majority of just over six thousand votes. His old seat, Walton, returned Mr (now Sir) Warden Chilcott, who still sits for it. If at any time in the future he should wish to give up his representation of the seat, it will not be surprising if Viscount Furneaux, Lord Birkenhead's son, now at Eton, succeeds him as the Conservative candidate.

Smith had every reason to be gratified with his success at the polls. It is always pleasant to succeed at one's first attempt. But he had an additional reason for satisfaction. The Liberals had swept the country, and scores of supposedly safe Conservative seats had been lost. Men of infinitely greater political experience and influence than he had been beaten.

When Parliament opened, the remnant of the Conservative party was cowed and dispirited, while the Government benches were packed with exultant Liberals and Radicals. Although the election having been fought and won chiefly on "Chinese slavery," the victors insisted that their success was a popular mandate for the whole of their programme, which included Free Trade, Home Rule,

the crippling of the House of Lords, and a miscellany of ill-conceived measures for education, the restriction of licences, and Welsh disestablishment. No time was lost. In the first days of the session Sir John Kitson moved a resolution that "this House, recognising that in the recent General Election the people of the United Kingdom have demonstrated their unqualified fidelity to the principles and practice of free trade, deems it right to record its determination to resist any proposal . . . to create in this country a system of protection."

The debate was limited to a single day; the House was crowded to suffocation, and everybody wanted to speak. Members came down to the House heavy with pride or gloom, according to their party adherence. They reckoned, however, without Smith, whom they did not know. He had decided to make this debate the occasion of his maiden speech.

That so new and unknown a member should have the opportunity to speak on this occasion needs explanation. Smith recalled Mr Chamberlain's invitation to make himself known to him at Westminster and, approaching his leader, asked that he might be allowed to oppose the motion. Mr Chamberlain agreed, went to see the Speaker, and returned to tell Smith that he would be called on at

10 o'clock, the best hour of the debate. "This is the chance of your life, my friend," he added. "See that you take it."

Smith has only prepared two speeches in the whole of his life. His defence of Goudie was one; this was the other. He wrote his speech, polished and improved it, and learnt it by heart. He drove down to Westminster with his wife, to whom he confided that he intended to stake everything on this speech. Either, he said, he would make himself famous, or, like Disraeli's maiden effort, his speech would subject him to such ridicule that he would be unable to face the House again for a year.[1] There were to be no half measures. "Need you quite?" asked Mrs Smith anxiously. "Yes, I need quite!" he replied.

Mrs Smith took her seat in the ladies' gallery, and in due course the Speaker called upon "Mr Frederick Smith" to address the House.

The young man rose just behind the Front

[1] The idea is commonly accepted that Disraeli was interrupted because of the extravagance of his speech and delivery, and so sat down shouting, "You will not hear me now, but the time will come when you shall hear me." The truth, however, is that Disraeli was indiscreet enough to make his maiden speech on what came later to be known as a typical "Irish night." The demonstration to which he was subjected was not really directed against him in person. His colleagues indeed applauded him, but their applause was lost in the expert disorder of their opponents.

Bench on which Mr Joseph Chamberlain and Mr Balfour, listless and bored, were sitting. He was tall, thin, handsome, elaborately well-dressed—although, as a sartorial critic commented, he wore a double collar with his frock-coat—and his dark hair was almost excessively brushed and parted. His eyes, nearly as dark, shone from a keen, clean-shaven face. He did not appear to be in the least nervous. In fact, he thrust his hands into his pockets, and inclined his body over the heads of the men in front of him with an informality remarkable in a maiden speaker. Even the members of his own party uttered murmurs of surprise as he rose. "Who is this boy?" they said. "Haven't we any one better?"

Another Unionist member had risen at the same moment, and the two began simultaneously to speak. "F. E." turned and waved down his rival, but the other refused to give way. After a few moments the Speaker, realising that there were two Frederick Smiths in the House, pointed to "F. E." and said, "*This* Mr Frederick Smith!" whereupon the other Frederick Smith, who is now Lord Colwyn, sat down.

This was hardly an auspicious beginning for a maiden speech on which so much depended, but "F. E." triumphed over it. As he began to speak in a voice remarkably clear and melodious,

the listeners missed the conventional appeal to their clemency. They missed, too, the semi-apologetic tone that had become usual even with the Conservative leaders at that time. The unknown dashed unceremoniously into a biting attack upon the Government and the means by which it had won the election. He referred to a Liverpool M.P., who, elected as a Conservative, had immediately crossed the floor to the Government benches and had seconded the motion under debate. "He entered the House," said Smith, "not, like his new colleagues, on the crest of the wave, but rather by means of an opportune dive. Everyone in the House will appreciate his presence, for there can be no greater compliment paid to the House by a member than that he should be in our midst when his heart is far away—for it must be clear to all who know the honourable member's scrupulous sense of honour, that his desire must be at the present moment to be amongst his constituents, who are understood to be at least as anxious to meet him."

There was a shout of laughter, as dear to the speaker as that which had greeted his defiance of Sir Wilfrid Lawson in another maiden speech over a dozen years before. When it came Smith knew that he had captured the ear of the House. His own Front Bench rocked about with delight. Mr

Balfour's habitual air of detachment relaxed; Mr Austen Chamberlain and his father laughed without restraint; and, said an eye-witness, "Sir Edward Carson was so happy as to look almost human." Some of the Radicals tried to disconcert him with interruptions, but were shouted to order by the Liberals and the Labour members, and then surrendered to the wit of his speech. Even the grave Mr Morley smiled.

Smith quoted an election remark by Mr Lloyd George, then President of the Board of Trade, that if the Tories came into power they would introduce slavery on the hills of Wales. "I did not say that," interjected Mr Lloyd George from the Treasury Bench. The House, now filled with members who had hurried in from the lobbies, waited to see the audacious novice crumple before this contradiction.

"Anticipating a temporary lapse of memory," he replied unrepentantly, "I have in my hand the *Manchester Guardian* of January 16. The right hon. gentleman will hardly claim that this newspaper is hostile to him. For my part I would rather accept the word of its reporter than that of the right hon. gentleman."

The Liberals gasped. The Opposition cheered. Here was a new David, not afraid to beard the greater David in the moment of the latter's triumph.

The speech continued. It rang with defiance, sparkled with epigram, contained even a Latin quotation and a reference to the French classics. "Every sentence was like the sting of a scorpion," wrote Mr Philip Snowden, who had just made his own maiden speech; "it was a piece of comedy more admirably acted than can be seen on the stage once in many long moons. The speaker was absolutely impassive and immobile. The roars of laughter which nearly every sentence called forth brought not the faintest ripple of a smile into the look of supreme contempt which covered his face."

Mr Winston Churchill—whose change of party certainly helped to open the field for Smith—had stated that he would no longer "protect" Lord Milner. "Does the House," asked Smith, "recollect La Fontaine's insect—the species is immaterial—which expired under the impression that it had afforded a lifelong protection to the lion in whose carcase its life was spent?" Then, "I have heard the majority on the other side of the House described as the pure fruit of the Cobdenite tree. I should rather say that they were begotten by Chinese slavery out of passive resistance—a rogue sire and a dam that roared!"

There came another shout of laughter. The Opposition were now cheering every sentence.

The leaders of the party nudged one another as the shafts went home. Even the Nationalists, connoisseurs in Parliamentary battle, recognised that there had never before been a maiden speech like this.

Smith leaned over to the occupants of the Front Bench and demanded a glass of water. One of his leaders dashed out to fetch it for this untried recruit to the party's strength, an obvious compliment to his prowess.

"The Free Church Council," Smith went on, "gave thanks publicly for the fact that Providence had inspired the electors with discrimination to vote on the right side. Mr Speaker, I do not, more than another man, mind being cheated at cards; but I find it a little nauseating if my opponent then publicly ascribes his success to the partnership of the Most High!"

He sat down. The Opposition shouted itself hoarse. The humiliation of the polls was forgotten; the attack on the Government had begun. Joseph Chamberlain, the greatest of the party's Parliamentary figures, turned round and said, "You only made one mistake, Smith. You put too much into it." No praise could have been sweeter. A crumpled note was passed along the benches to the young speaker from Mr Tim Healy, the Nationalist M.P. (now Governor-General of the

Irish Free State) and the acknowledged master of Parliamentary vituperation. Its message of congratulation ended with the words: "I am old and you are young; but you have beaten me at my own game." "We have just listened to a very brilliant speech," said Mr Lloyd George, as he rose to speak for the Government.

Smith knew that, more fortunate than Disraeli, he had succeeded in his first Parliamentary ordeal. How great the success was he could not wait to learn, for he had to hurry away with his wife to catch a night train to the North, where he was briefed for an important arbitration in the morning. The train stopped in a junction at daybreak. He hurried to the bookstall and bought all the newspapers. They spoke of nothing but his maiden speech, which has ever since been a tradition of the House and a rousing, if heart-breaking, example for every new member.

"Never was there a bigger success than this maiden speech of F. E. Smith," wrote Mr T. P. O'Connor. "Literally he could repeat the words of Byron after that first performance; he woke the next day and found himself famous."

He never looked back. The next time he addressed Parliament, its benches filled with friends and opponents, expectant of more fireworks. Smith realised, however, that he had to show

himself a man of parts as well as of wit. His speech—it was in support of the exemption of private property at sea from capture in war—was studiously serious. The House was disappointed of its fun, but, as he intended, it had to admit that he was an able lawyer and a lucid exponent. His first speech forced the wedge of his personality into the structure of his party. The deliberate weight of the second drove it home. From that moment he was recognised as the coming man of the Conservatives.

CHAPTER III

WHEN Lord Birkenhead left the notorious Carlton Club meeting in 1922, which decided the fate of the Coalition Government, an excited, middle-aged man, whose blue apron, rolled shirt-sleeves, and pungent aroma proclaimed him a fishmonger, stood on the pavement of Pall Mall and shrieked "Judas!" at him. This taunt has been echoed by others. The *Morning Post*, for example, also in fishwifely fashion and with the controversial characteristics of Billingsgate, never tires of proclaiming that the subject of this book has constantly trimmed his sails to the prevailing political wind.

One cannot be an adventurer, even in the Disraelian sense, without breaking heads, and disgruntled political adversaries in England invariably reproach their victors with breaches of faith. It is the consolation of the discredited. But Lord Birkenhead may—indeed he does—look back over his career without reason to regret or extenuate a single political action. He has never broken faith or gone back on his word. Humility is not

one of his faults, and he has been heard half-seriously to marvel that any man could be so perpetually and consistently right about everything.

As Sir Leslie Scott, K.C., has acutely pointed out, Lord Birkenhead has never made a practice of enunciating his principles in his speeches. He chooses always, rather than run the risk of seeming platitudinous, to leave the audience to understand his underlying principles from the force of his arguments and illustrations. No public man of our time, however, is less to be moved from what he conceives the right and proper course of action. He is, and has always been, absolutely reckless and daring as to consequences when once he has made up his mind. "Don't-care Smith" might still be his nickname, as it was at Oxford. He has risked his career so often for his principles, as will be seen in these pages, that it is curious to find prejudice accusing him of the very fault of which he is most free. A little Pecksniffery is a valuable asset for a modern statesman; but such hypocrisy is not one of Lord Birkenhead's weaknesses.

The problems that convulsed Parliament during his first eight years in the House of Commons have naturally been overshadowed by the catastrophe of 1914 and the world-wide readjustments of the armistice period. The competent historian, however, will not fall into the error of depreciating

the grave constitutional issues of those years. The Irish crisis, the Budget, the question of the House of Lords, women's suffrage, the mess of controversial tinkering with education, licensing, and Church disestablishment—all these were problems of the first importance. Smith, the rising hope of the Conservative party, took a prominent share in the contests that ranged round them.

These were the years in which he made his name, his friendships, and his enmities. His rise in his profession, of which I shall speak later, was equalled only by his increasing prominence in politics. The election of 1906 (and those of 1910) filled the Government benches at Westminster with an extraordinary collection of cranks, faddists, self-seekers, and wire-pullers. Since the incredible first Duma in Russia, no such assembly has been seen. The capable men at the head of the Liberal party—among them Sir Henry Campbell-Bannerman, Mr Asquith, Mr Haldane, Mr Birrell, and Mr Lloyd George—were themselves appalled by their own supporters. "The Liberals were always an anti-English party," growls Lord Birkenhead when he recalls those days. The Government owed its majority to a coalition of incompatibles. The Nationalists had pledged themselves to support all the Liberal measures as the price of the promise of Home Rule. In return, the Non-

conformists and Little Navyites supported Home Rule. The Cabinet skilfully fed its attendant wolves by the sacrifice of more and more of its credit. As an exhibition of political funambulism it was remarkably entertaining, but as responsible statesmanship it was deplorable.

Of all these problems the Irish question was the most bitterly fought, and the chief of his enemies' charges against Lord Birkenhead is that he has been inconsistent in regard to Ireland. They point out that, as F. E. Smith, he was one of the principal opponents of the pre-War Home Rule proposals, whereas as Lord Birkenhead he was the chief negotiator and one of the signatories of the 1921 treaty which established the Free State. But, as will be seen, there is no inconsistency in this.

The discreditable contract which placed English politics at the mercy of Irish politicians was vigorously condemned by the Conservatives after 1906. Smith went up and down the country denouncing it with the same vigour as he displayed in the House of Commons.

It became clear that Ulster's loyalty to the Union was to be sacrificed to the Government's itch to remain in power. The Ulstermen retaliated in 1912 with their Covenant, which pledged them "to stand by one another in defending, for ourselves and our children, our cherished position

of equal citizenship in the United Kingdom" and, should a Home Rule Government be set up in Dublin, to "refuse to recognise its authority." The first signatory to the Covenant was Sir Edward Carson, who was accompanied by Smith on his journey to Ireland. Practically every adult Protestant in Ulster signed. Smith, being an Englishman, could not sign, but the fact that his birthday falls on July 12, the anniversary of the Battle of Boyne (the great Protestant victory in which, it is said, both combatant armies had the Pope's blessing), was not overlooked.

The Home Rulers, both in England and Ireland, professed to regard the Ulster resistance as bluff, and forced the Bill a second time through the Commons. It was sent up to the House of Lords and rejected once more by them in 1913. In accordance with the provisions of the Parliament Act it had only to be passed by the Commons again in the following session to become law.

Sir Edward Carson enrolled volunteers to resist the enforcement of the Bill, and these began to drill. In September 1913 an Ulster Provisional Government was formed with him at the head. The volunteers increased to nearly 100,000. The Conservative party, Smith their most eloquent spokesman, ranged themselves solidly behind the Ulstermen, and he became also a "galloper" in the

F. F. Smith as Undergraduate

Ulster army. Had battle been forced upon the Loyalists, Smith would undoubtedly have fought.

The Curragh bombshell burst in March 1914, and was followed by a deadlock. The Ulstermen were determined not to be forced out of the Union; the Liberals and Nationalists were determined to coerce them. Everything seemed ready for a little war, and only the outbreak of the Great War prevented it. Nationalists and Ulstermen, with true Irish bellicosity, postponed their private quarrel to share in the larger struggle overseas. Serious trouble, however, sprang up again with the Dublin rebellion of Easter 1916. The Nationalists, who saw the situation drifting out of their hands, began once more to urge the immediate putting into operation of the Home Rule Bill; but already Sinn Fein had undermined their authority, and the old proposals were no longer practical politics.

In the 1918 elections only seven Nationalists were returned to Parliament, against seventy-three Sinn Feiners, who refused to take the oath at Westminster. The guerilla war and its concomitant outbreaks of assassination began, and for three years Ireland was converted into a hell of bloody destruction. A last attempt was made to carry a Home Rule Bill, and in November 1920 Lord Birkenhead, now Lord Chancellor in the Coalition Government of which Mr Lloyd George was Prime

Minister, moved its second reading in the House of Lords. It contained special provisions safeguarding Ulster, which accepted it. But Sinn Fein rejected it. By the end of the following year everyone saw that Southern Ireland could not again be brought under the control of Westminster without enormous sacrifices of life and money. It was, on the other hand, equally manifest that Sinn Fein could never expect to dominate Ulster. The Coalition Government, with Lord Birkenhead as the prime mover, determined to liquidate the position before the future of Ireland was irrevocably destroyed. At first the Sinn Feiners sent stupid and insulting replies to the Coalition overtures, but at last a Sinn Fein delegation arrived in London, and, thanks in great measure to the Lord Chancellor's conciliatory attitude, the Free State was established by treaty on 6th December 1921. Without Lord Birkenhead the Irish settlement would never have been made.

A stumbling-block at the conference was the form of oath that the members of Dail Eirann were to take on election to that body. Mr Lloyd George wished to make it one of explicit and outstanding allegiance to the King, and threatened to break up the conference if this were not accepted. Lord Birkenhead, whose loyalty to the Crown is not less than Mr Lloyd George's, but whose apprecia-

tion of the delegates' difficulties was keener, at last drew up a formula which satisfied both parties and which is now in use in the Free State Parliament.

Michael Collins, the Sinn Fein leader, said that during the negotiations he was disarmed at every point by the "candour, magnanimity, patience, and honesty of the Lord Chancellor."

Then began the campaign of venomous denunciation of Lord Birkenhead by the Unionist Die-Hards. Ulster was safe, but, resentful of its salvation, some of its spokesmen declared that the Treaty was a betrayal of the Southern Unionists. Lord Carson referred to Lord Birkenhead in the House of Lords as "a man who was once my friend." Like the other signatories to the Treaty, he has ever since been exposed to threats of assassination, which the murder of Field-Marshal Sir Henry Wilson showed to be more real than the average person believed the case. As recently as November 1925 he had to abandon a visit to Dublin to address the Historical Society of Trinity College because a plot had been brewed against his life.

Yet his views were consistent from beginning to end of the Irish trouble. His own words are the clearest. At an Irish Club dinner in 1922, he said: "I must sincerely challenge and deny the statement that there has been some degree of inconsistency in my political history. If you

will take the trouble to read any observation I have made upon the Irish question during the last fourteen years, you will find that I have never founded an argument against Irish Home Rule which has not depended upon the recognition that there is a different population in the North, which has to be won over and cannot be conquered. I have never made a speech in my life in which I challenged the right of the South to govern their own people. This has run like a golden thread through the speeches I have made on the subject during the last fourteen years. I have always realised that there is an overwhelming case in the South, and that there is a different case, equally overwhelming, in the North." Clear and accurate as this statement is, it is beyond the comprehension of the Ulster Die-Hards. Having single-track minds, they naturally suspect every normally equipped man of double-dealing.

In regard to Ireland, Lord Birkenhead never professed to be a Die-Hard; nor was he a Die-Hard in regard to the Budget, although he certainly was in regard to the Parliament Act. In each case he may claim to have been right.

Mr Lloyd George introduced his notorious Budget in 1909 after many provocative hints that it would inaugurate a new epoch in our social history. The Unionist party accepted this somewhat

extravagant view and opposed it hip and thigh. It passed the Commons at last, and, amid political tension almost unprecedented in British history, the decision of the House of Lords was awaited. Would the Lords take the extreme course of refusing to pass it into law?

The Conservative party divided into two sections—the Die-Hards (although the name was not yet current) who wanted the Lords to exercise their power to reject the Budget, and those others who feared that such a move would have perilous political consequences for the Lords themselves. Smith belonged to the moderate group. In his view the passing of the Budget into law would have manifested its follies, and the Unionist party would have been returned to power within a year by a disillusioned electorate, and could soon have repealed the more absurd portions of the new legislation. He spent three hours one evening after a dinner-party at the late Duke of Sutherland's house trying to persuade his party leader not to throw out the Budget in the Lords. He pointed out the dangers to the Lords and the party, and kept Mr Balfour until half-past two in the morning, urging him to hold back the extremists. But Mr Chamberlain from his sick-bed had spoken; the extremists were in full cry, and Mr Balfour may have found it impossible to call them off. In any case, he did

not do so, and the Tories suffered—not for the first or last time—from the stupidity of its Die-Hards.

The Lords threw out the Budget, and Mr Asquith went to the country. The Budget election was conducted with the utmost political ferocity. Unionist meetings all over the country were broken up by gangs of rowdies, unofficially inspired by the Radical agents. Smith sacrificed his own domestic campaign for a rhetorical tour throughout the country, everywhere attracting enormous audiences. One of the meetings he addressed was at the Free Trade Hall in Manchester; six thousand people, friendly and hostile, assembled there to hear him, and at least as many struggled outside for admission. Smith was caught in the crowd as he tried to enter, and remonstrated with a burly neighbour who was pressing on him. "I want to get in to hear that —— —— F. E. Smith," explained the stranger. "Well, I am that —— —— F. E. Smith," replied Smith, "and if you don't help me to get in, you'll never hear that —— —— F. E. Smith speak!"

This campaign left him only the last four or five days of the contest for work in his own constituency. Nor did he find this easy.

On his first appearance on a platform there he was howled down by roughs in the hall, and the same thing happened again the two next nights.

Mrs Smith, too, sitting in a taxicab outside a hall to which she was unable to obtain admission, had the unusual experience of watching the driver mount on his seat and deliver an impassioned Socialist address to a mob whose hostility seemed about to express itself in personal violence against her. And Smith looked like losing his seat.

Faced with this crisis in his political affairs, Smith recalled the existence of a Birkenhead dock-side publican of dubious reputation whom he had successfully defended on some of his appearances in court. It seemed that gratitude might be forth-coming. Smith called on his client and inquired if a dozen muscular longshoremen could be mus-tered. He was prepared, he said, to furnish each of them with a frock-coat, appropriate trousers, and a black tie. Hats and boots were ruled out as an unnecessary expense, and the publican was com-missioned to provide, clothe, and parade his men. They were to report to Smith before his meeting began that evening. His friend and pupil, Jack Scott, "the bravest man I ever saw riding to hounds,"[1] who was later to become an intrepid airman and die for his country in the War, undertook to command this bodyguard.

They arrived, and Smith looked them over with an approving eye. They looked very odd, but

[1] *Points of View*, vol. ii. p. 137.

very strong. He gave them their instructions, and the meeting began. Smith appeared on the platform, to be greeted with shrieks of abuse. One of the interrupters, the leader of the gang, made himself conspicuous. This was an error of judgment, for the speaker signed to Scott and his "stewards," who, abashed at their own magnificence, nestled coyly round the walls. The next incident took place quickly. One moment a burly and vociferous hooligan was master of the situation. The next moment his seat was vacant, and he was outside the hall, more surprised than hurt. The rest of Smith's election campaign was conducted in exemplary calm, and he was returned to Parliament by a majority of 1114 votes.

After this election King Edward expressed a desire to meet some of the younger Conservative politicians who had made their mark in Opposition, for there was a possibility that, if the Liberals could not adjust their differences with the Irish Home Rulers, the Conservatives might return to power. He requested the late Lady Savile, therefore, to invite a few of these young men to meet him at her house, himself suggesting most of the names. Among the list was Smith. When the King arrived and shook hands with them, Smith was presented to him. "Ah, yes," said the King, warmly, "I read your speeches with growing interest." This compli-

ment, so happily worded and so encouraging to a man who was winning his spurs, is typical of King Edward's tact and good-nature.

The Liberals lost a certain number of seats, but they were returned to power again by the support of the Irish members. The condition of the latter's adherence was that the Home Rule Bill should be pressed forward. The Welsh members of the Government demanded also, as the price of their unswerving support, that the Welsh Disestablishment Bill should be passed. The Lords, however, were adamant, and, after long and acrimonious discussion, Mr Asquith threatened to advise the King to create a sufficient number of new peers to overcome the Conservative majority in the Upper House. Faced with this threat, the Unionist party considered their policy. Lord Lansdowne, the leader of the Conservative peers, favoured surrender. He thought the Liberals serious in their intention, and he feared that, if the mass elevation took place, it would for ever destroy his party's ascendancy in the Lords. Mr Balfour, the party leader in the Commons, was of the same opinion.

A considerable number of Unionists, however, would have chosen to defy the Government to proceed with its project. They called themselves Die-Hards. Lord Halsbury was the chief of this

group in the Lords, Mr Austen Chamberlain and Smith its most active representatives in the Commons. They argued that it was discreditable for the peers to be frightened into surrender by such a threat, and pointed out, with pleasant malice, that Liberal commoners, when raised to the Upper House, habitually modified their views. Further, to give way now, they said, was to leave the Government in a position to apply the same threat at any future occasion. They considered, too, that the Government might at the last moment shrink from so sweeping and cynical an attack upon the House of Lords.

Nobody will ever know whether the Government would, in fact, have withdrawn its threat. Lord Oxford, in his latest book, implies that the Government would have stood firm, but at least one of his colleagues has suggested the opposite. Perhaps they were as much divided as the Opposition, who were still more in the dark. The Lansdowne group had its way and the Die-Hards were beaten. Each section of the Conservatives had good reasons for its policy, and certainly Smith had no cause to regret his attitude.

The excitement of the moment and his dissatisfaction with the surrender of the majority of the Conservative peers led him to produce his only verses that are known to have seen the light.

In September 1911 the *National Review*, one of the Die-Hard organs, published two poems on opposite pages under the general heading: "To the Noble Abstainer and the Noble Renegade." They were signed merely "Die-Hard," but I think they may reasonably be ascribed to the muse of one who in his youth cherished for a very short time the ambition to become Poet Laureate. They were as follows:—

LINES TO A NOBLE LORD WHO ABSTAINED FROM VOTING IN THE DIVISION UPON THE PARLIAMENT BILL.

My Lord, you chose, we hear, the braver part
In the death-struggle of an ancient caste.
"You would have fought; you had a fight at heart;
It was your wish to struggle to the last."

But though to fight you were so much inclined,
Your duty to a Leader held you "true."
My Lord, are you yourself without a mind?
Have you put Honour in committee too?

About the dead we will at least be true;
And your great House is dead, abandoned, shamed.
Your sons, my Lord, will ask wherein did you
Contest a measure which your mouth defamed.

My Lord, your part, I think, will live as long
As manly virtues are by cowards feigned.
The stern old warrior taught you right and wrong;
But you, my Lord, you answered—and abstained.

LINES TO A NOBLE LORD WHO VOTED WITH THE GOVERNMENT IN THE DIVISION UPON THE PARLIAMENT BILL.

We heard your specious plea for common sense,
But you—you have no place in honest talk.
We read your heart; we spurn your base defence.
You knelt because you loved the Caudine Fork.

My Lord, you tell us you will fight again.
"The choice is odious; 'twas a grievous lot."
But will you fight? Your leaders may refrain.
The traitor does not fight again. He's shot.

My Lord, I think we understand your view.
You did not yield. You rather would have died.
You saved your King ('twas this that weighed with you);
My Lord, the People think your Lordship lied.

Where all is lost we can at least be frank,
And brand the truth on those who sold the pass.
You shrank from an enlargement of your ranks,
You vilely voted to maintain your class.

Introducing these lines, the editor of the *National Review* told his readers that "these spirited verses undoubtedly represent the feelings of the natural man," and a severe critic might say that, if they are not altogether good verse, they are exceedingly fine prose. The critic might add that the lines are undoubtedly inspired by a poem by Tennyson, curiously unfamiliar to the present generation, *The Third of February*. Anyone who studies Lord Birkenhead's oratory will find quotations

from these verses in his earliest as well as his latest speeches. Curiously enough, in his early days he favoured the opening lines:

> My Lords, we heard you speak: you told us all
> That England's honest censure went too far;
> That our free press should cease to brawl,
> Not sting the fiery Frenchman into war.
> It was our ancient privilege, my Lords,
> To fling whate'er we felt, not fearing, into words.

Then in the middle period one finds lines from the body of the poem, while to-day, on the political platform at least, not a few of his orations end with its concluding words:

> But some love England and her honour yet.
> And these in our Thermopylæ shall stand,
> And hold against the world this honour of the land.

It must be recorded that, during the split in the Conservative party, Smith made a considerable sacrifice for his opinions in refusing Mr Balfour's offer of a seat on the Front Opposition Bench, which was tantamount to a promise of a post in the next Conservative cabinet and a signal honour for a young man of thirty-seven, with only four years' Parliamentary experience. It must have been a severe trial to so ambitious a man to reject it, but he did so, and thus definitely gave the lie to

those who taunt him with pressing his advancement at the expense of his principles.

Fortunately for him, however, the offer was repeated a year later by Mr Bonar Law, Mr Austen Chamberlain, and Mr Walter Long, and on February 20, 1912, Smith stood for the first time at the box. He signalised this step in his political career by a vigorous and ironical speech in moving the Opposition amendment to the King's Address. The amendment regretted that no official reference had been made to the Government pledges to reform the House of Lords, and deplored that, under these circumstances, such measures as the Home Rule Bill should be put forward. Smith quoted Mr Asquith's statement that "I have said more than once that the Government regard it as an obligation of honour to propose during the lifetime of the present Parliament, if time permits, the reconstitution of the Second Chamber." "Surely," said Smith, "it will be necessary now to revise our ethical category. It will no longer be possible to divide men into honourable men and dishonourable men, but it will be necessary to say there are: (1) Honourable men; (2) Dishonourable men; and (3) Honourable men if time permits."

It is worthy of note that, although he opposed to the end the Liberal plans for destroying the power of the Upper House, he has always been in

sympathy with proposals to reform that chamber, the unpopularity of which he sees as a menace to its own security and to its value in the constitution. When he accepted the post of Lord Chancellor in the Coalition Government, it was on condition that the reform of the Lords should form a subject of consideration by his colleagues. More recently he has put forward definite proposals for reform, and I predict that he will before long persuade a large proportion of his party to adopt them.

Another progressive measure which had his support in those early days was the payment of members, which he advocated as a corollary to his support of the Osborne judgment.[1] He roundly opposed women's suffrage, however, and resisted the arguments of those who claimed that the careers of certain exceptional women justified an extension of the vote to the whole sex. "I venture to say," he stated in the House, "that the sum total of human happiness, knowledge, and achievement would have been almost unaffected, if Sappho had never sung, if Joan of Arc had never fought, if

[1] Osborne, a member of the Amalgamated Society of Railway Workers, now the National Union of Railwaymen, asked the courts to declare void a rule of the Society which set aside a portion of its funds to the support of Labour Members of Parliament. He won his case on appeal in 1909, but four years later the Liberal Government passed the Trade Union Act, which virtually re-established the *status quo*.

Siddons had never played, and if George Eliot had never written. At the same time, without the true functions of womanhood, faithfully discharged throughout the ages, the very existence of the race and the tenderest and most sacred influences which animate mankind would have disappeared. Profoundly believing as I do that these influences are gravely menaced by the intrusion of women into the field of politics, I move the amendment which I have on the paper."

The War, however, and the share that women played in its conduct altered his views in this respect. When the Women's Suffrage Bill was brought into the Lords in 1917, he felt that his earlier attitude no longer met the situation. He therefore supported the Bill, adding the sardonic remark, which his enemies were careful to note while ignoring the rest of his speech, that the Bill was certain to be passed whether he opposed it or not.

A recent attempt (June 1926) to allow peeresses in their own right to sit in the House of Lords was defeated by his intervention in the debate. He saw in the proposal a menace to the desirable reform of the Lords. "Let women," he said, "come forward on their merits, not as the nominees of chance and as mere conduit-pipes established in the hopes of making a permanent male

F. E. Smith as Don

succession." This exhortation appears to have displeased the feminine aspirants to the House.

There is no need to examine here the attitude Smith adopted in opposition to the Education and Welsh Disestablishment Bills and other minor misdemeanours of the Liberal Governments between 1906 and the outbreak of the War. His rhetorical assertion, however, that the Welsh Disestablishment Bill—in favour of the principle of which he had, as we saw, by some fantastic chance, spoken years before in the Oxford Union—had "shocked the conscience of every Christian community in Europe," inspired one of Mr G. K. Chesterton's most amusing poems, beginning:

Are they clinging to their crosses,
F. E. Smith,
Where the Breton boat-fleet tosses,
Are they, Smith?
Do they, fasting, tramping, bleeding,
Wait the news from this our city?
Groaning "That's the Second Reading!"
Hissing "There is still Committee!"
If the voice of Cecil falters;
If M'Kenna's point hath pith;
Do they tremble for their altars?
Do they, Smith?

and ending:

It would greatly, I must own,
Sooth me, Smith,
If you left this theme alone,
Holy Smith!

For your legal cause or civil
  You fight well and get your fee;
For your God or dream or devil
  You will answer, not to me.
Talk about the pews and steeples
  And the Cash that goes therewith:
But the souls of Christian peoples . . .
    —Chuck it, Smith!

He brought a sustained brilliance of expression, a fund of stinging epigram, and an unrivalled power of debate to the service of his party.[1] The House filled whenever he rose to address it, and it became the almost invariable habit of his successor in debate to refer to "the brilliant speech to which we have just listened." He was accused, unjustly, of preparing his "impromptus" and even of rehearsing with Mr Churchill the lively passages of arms that so often enlivened proceedings. Yet it should have been obvious that he needed no such aids. A great Parliamentary career must be based, as in his case it is, on a natural foundation of eloquence and humour.

[1] There was one solitary occasion when a Radical scored off him in the House. The speaker, an old Parliamentarian, read part of a report of one of Smith's speeches in the country, but the young Conservatives insisted that he should read it to the end. He gave way at last and read solemnly that "Mr Smith then kissed his hands to the ladies and joined in the singing of 'Auld Lang Syne.'" "I don't know," he went on, "what the hon. and learned member's qualifications are for the former, but for the latter I must certainly concede that he is a master of—pitch!"

His return to Westminster in 1906 led to his transferring the centre of his legal work to London. He rented chambers at 4 Elm Court, in the Temple, and took silk in 1908, after only eight and a half years at the Junior Bar, becoming the youngest King's Counsel in the country. He went on this occasion to the House of Lords to see Lord Loreburn, the Lord Chancellor, who said to him: "Mr Smith, I prophesy that you will one day sit in the seat which I now occupy." To this the new silk replied: "Lord Chancellor, if I do, I shall always try to be as kind to young men as you to-day have been to me." Lord Loreburn's prophecy came true some ten years later, and many young men have since had reason to thank Lord Birkenhead for kindnesses, privately and publicly bestowed. In 1908, too, Smith was elected a Bencher to Gray's Inn. He became a Privy Councillor in 1911.

He was rapidly building up the finest practice of his day at the Bar. Acknowledged its most brilliant pleader, he found his services in general demand. Few *causes célèbres* occurred in which he was not briefed. He represented the plaintiffs in the Marconi libel case, somewhat to the dissatisfaction of certain persons of his party, who would not have been unwilling to see the slandered members of the Liberal Government left to their own resources. He even had a share in the Crippen

case, being briefed for the defence of the murderer's associate, Ethel le Neve, for whom he was able to secure acquittal. He appeared for the relatives in the well-known Sackville-West case concerning the will of Sir John Scott. In the unsavoury Moosbrugger divorce trial of 1913 he was briefed for the co-respondent, and won his case by an extremely brilliant feat of advocacy. Horatio Bottomley, who may be credited with critical views on the ability of lawyers, invariably endeavoured to secure Smith's services when abler brains and better legal knowledge than his own were required.

When Mr William Lever (the late Lord Leverhulme) was the victim of serious attacks in the Press, which accused him of creating a "Soap Trust" and of misleading the public in regard to his wares, he placed the material on which he desired to institute an action for libel before two eminent counsel, one the late Mr Boydel Houghton, at the time the most eminent junior at the Bar, the other a leading barrister who is now a Lord of Appeal. They both advised that in view of the existing prejudice against the soap manufacturers created in the public mind by the offending newspapers all over the country, an action for libel would not succeed. Mr Lever refused to accept their judgment, and through his solicitor, the late Mr

George Harley of Liverpool, he telegraphed to Smith, who was spending the week-end at Oxford, to come to London at once on the most urgent legal business. Smith made the journey, and at eight o'clock in the evening he was handed a stack of papers about four feet high and told that an opinion by him was imperatively necessary by nine o'clock next morning. At half-past eight that morning, having sat up all night with the papers, Smith was ready for Mr Lever, always an early riser, with a two-line opinion. It was as follows:

"There is no answer to this action for libel, and the damages must be enormous. F. E. SMITH."

In the sequel the various actions which Mr Lever successfully instituted against the late Lord Northcliffe and his various newspapers cost them, including damages and costs, nearly £220,000, as Lord Northcliffe, who, like all very great men, was a most generous loser, more than once admitted, sometimes on semi-public occasions. It may be added that, far from bearing any ill will towards the advocate to whom alone he owed the misfortune, Lord Northcliffe almost always supported him in political matters and ultimately gave him nearly all the legal business of the *Daily Mail* and the *Times*.

Despite his reputation as a witty and ruthless

cross-examiner, Smith made it a rule never to score off counsel on the other side except in self-defence. If the other barrister did not interfere with him, Smith left him alone. But if the other barrister began a personal conflict, he regretted it. On one occasion Smith found himself opposed by the late Sir Patrick Rose-Innes, a florid and somewhat pompous K.C., who had taken silk after forty years at the Junior Bar. Smith, in his speech to the jury, referred to Innes' client as "this old scoundrel." "I determined," Innes related afterwards to a friend, "to shut F. E. up. I rose, and F. E. sat down. 'M' Lud,' I said to the judge, 'my client is a merchant in the city of London. I submit that it is most improper to refer to him as "this old scoundrel."' Smith got up again when I sat down, and addressing the jury again, said: 'As I was saying, this *fraudulent* old scoundrel——' I didn't dare interrupt him again, because I didn't know what adjective would come next."

Perhaps the greatest testimony to his art as an advocate was a case which came on about 1910, in which Smith appeared for a woman litigant who was claiming compensation for a taxi accident. For some reason she decided to make two claims against different insurance companies; from one she demanded compensation for injuries to her

elbow and from the other for injuries to her knee. By a chance, unlucky for her, the two doctors sent by the companies happened to meet on her door-step, and, passing the time of day, discovered that they were both about to examine the woman for alleged injuries in the same accident. One went away for an hour, and the other, while pretending to examine the lady's knee, took particular note of the state of her elbow. When he left, his colleague examined her elbow but was really watching her knee. Both doctors decided that she was shamming, in that, while each was examining her, she appeared to be suffering no inconvenience whatever from the other limb alleged to be affected. Smith realised, from the moment this medical evidence was given, that he had not the shadow of a hope of success; his cross-examination of the two doctors, however, was so masterly that the judge did not stop the case—as had seemed likely—and it went on solemnly to the end, although for some time his client had seemed in imminent danger of going to gaol for perjury. Such was his skill when faced with an unexpected and overwhelming situation.

Another good story told of him concerns his opening a case before Mr Justice Ridley, of whom it may be said that, whatever his merits, he is not the most judicial person who has adorned the

Bench. When Smith rose to address the jury, the judge made this remarkable observation: "Mr Smith, I have read the pleadings, and I do not think much of your case." "Indeed, m'Lud, I'm sorry to hear that," was the instant reply, "but your Lordship will find that, the more you hear of it, the more it will grow on you!" The judge burst into a roar of laughter, and Smith, duly addressing the jury, won his case.

The story, too, is told of his appearing for an omnibus company against whom damages were claimed for a youth whose arm was said to be permanently disabled by an accident. "How high can you lift your arm?" Smith asked this unfortunate. With a show of great pain the lad raised his arm to the level of his shoulder. "And how high could you raise it before the accident?" The incautious claimant thrust his arm high up into the air—and lost his case.

He appeared one day for a tramway company sued for damages for injuries caused to a boy who had been run over. The plaintiff's counsel pitifully explained that the boy had gone blind as a result of the accident. "Blind? Poor boy!" said the judge, Judge Willis, much affected; "stand him on a chair, and let the jury see him!" This extraordinary and unjudicial suggestion roused Smith's wrath. "Perhaps," he suggested icily, "your Honour

would like to pass him round the jury-box." "That is a most improper observation," said the judge. "It was provoked," retorted Smith, "by a most improper suggestion." The judge was furious. "Mr Smith," he cried, "you remind me of a saying by Bacon, the great Bacon, that 'youth and discretion are ill-wedded companions.'" Now Smith had had up his sleeve for years one of Bacon's sayings, which he had often wanted to quote while never dreaming that so perfect an opportunity would be afforded him. He remembered it. "You remind me," he said, "of a saying by Bacon, the great Bacon, that 'a much-talking judge is like an ill-tuned cymbal.'" "You are offensive, sir!" cried the judge. "We both are," Smith replied; "the difference is that I'm trying to be, and you can't help it. I who have been listened to with respect by the highest tribunal in the land am not going to be browbeaten by a garrulous old county court judge." The evening papers that day placarded the streets with references to this "brush between judge and counsel." Mrs Smith, shopping in Bond Street, saw the posters, immediately suspected that her husband was concerned, bought a newspaper, and found her suspicion justified.

His unceremonious, almost lackadaisical air when pleading in the Courts was much remarked upon. However effective this may have been, and may have

been intended to be, it is necessary to point out that Smith was six feet in height, whereas our Courts appear to have been designed to allow barristers several inches shorter to secure the proper angle of address and persuasive approach to judge and jury.

By 1914 he was earning nearly £30,000 a year at the Bar, and Mr Justice Bigham could, with pleasant humour, pretend to believe that the palatial new Liverpool buildings of the Mersey Dock and Harbour Board were "F. E.'s new chambers." He possessed his present house at Grosvenor Gardens, a country residence at Charlton, on the borders of Oxfordshire and Northamptonshire, and the not less expensive luxury of a son and two daughters.

Even so he did not neglect "the most important banking account of all"—his health. He rode to hounds with several packs of the Midlands. He played Rugby as regularly as engagements permitted, first for Birkenhead Park and later for the Harlequins in London. History records that he played centre-forward for Charlton against the neighbouring village of King's Sutton in an Oxfordshire Association Football League match, and scored for his side the two goals which won the match. Strenuous practice made him a lawn-tennis player of more than average merit. He was a keen member of the Queen's Own Oxfordshire

Hussars, a volunteer regiment of distinction. As for his prowess at other sports, he found himself one evening in camp playing bridge at the same table as the Duke of Marlborough. "What shall we play for, F. E.?" asked the latter, who had large ideas of suitable stakes. "Your damned palace, if you like," is understood to have been the answer.

He was able to say in 1907 that, "I have been guilty of two or three books, but I can plead in extenuation that they were only little ones and strictly professional at that." By 1914 the list was considerably extended. The most important volume, perhaps, was a selection of his speeches between 1906 and 1909. Unlike most similar volumes, it met with public success and quickly went into a second edition. Any reader of these lines who imagines that the praise given to Smith's Parliamentary eloquence in his early years is excessive and that the effects of his speeches have been exaggerated in retrospect would do well to turn to that collection. It is one of the most interesting and amusing commentaries on pre-War politics that will ever see the light.

CHAPTER IV

THE outbreak of the War in August 1914 was the turning-point of Smith's life, as it was for most other people in the world. It meant for him an almost complete break with the past. He ceased to be merely a private citizen, a barrister, and a Member of Parliament. His practice at the Bar gave way first to duties at the Press Bureau, then to military service in France, and finally to an official career as Solicitor-General, Attorney-General, and in other even more important posts.

Mr Winston Churchill on the Thursday evening preceding the outbreak of hostilities entered into communication with the leaders of the Conservatives through Smith. The latter said that he was unreservedly for standing by France and Belgium and would sound his colleagues for their views. He saw Mr Bonar Law, Sir Edward Carson, and other leading members of his party at Sir Edward Goulding's house at Wargrave, and sent Mr Churchill the following letter:—

"I have spoken to my friends of whom you know, and I have no doubt that on

> the facts as we understand them—and more particularly on the assumption (which we understand to be certain) that Germany contemplates a violation of Belgian neutrality—the Government can rely upon the support of the Unionist party in whatever manner that support can be most effectively given."

Mr Churchill sent this letter to Mr Asquith, the Prime Minister, to whom, in the midst of his responsibilities and the difficulties he was encountering with the pacifist members of his Cabinet, it came as a welcome message.

As a Yeomanry officer, Smith was mobilised at the outbreak of hostilities. He was then summoned at a moment's notice, on August 8, by Lord Kitchener and Mr Winston Churchill, the heads of the War Office and the Admiralty, and asked to undertake the formidable task of establishing a Press Bureau. Never before had such an organisation been known in this country, and Smith, although he had had no connection with the Press, was called upon to devise the whole machinery of newspaper censorship which functioned until the end of hostilities. He had no model on which to work. He had to deal with a class of men, editors and journalists, who are accustomed in their daily work to innumerable

unwritten privileges and who could not be expected to subject themselves too easily to the severe control necessitated by the crisis. At the same time Smith realised the importance of subordinating his department to the wishes of the military and naval authorities, only seeking to temper their distrust of publicity with his tact and judgment. That the Press Bureau was an admitted success, so far as it could be successful, and that it remained efficient, if liable to criticism, to the end of the War (long after Smith left it), reflects equal credit on him and on those who had to accept its vetos and suggestions. Its work, as he later remarked, was at once "most difficult, most thankless, and most unwelcome."

It has, by the way, been pleasantly recalled that a previous bearer of the name of Birkenhead —Sir John Birkenhead (1616–79)—was a censor, or licenser, of the Press in the seventeenth century. Sir John was a Cheshire man who shared Charles II's exile; he was an Oxford graduate and, in the words of a contemporary, "by profession a student of law and a very apt scoller . . . . exceedingly confident, witty, not very greatfull to his benefactors, and would lye damnably."

There is little of spectacular interest to record of the time he spent at the Bureau. A certain public excitement was caused by the publication

of a despatch by the Northcliffe Press—in those days a combination including the *Times*, the *Daily Mail*, the *Daily Mirror*, and many other sheets—giving a sensational account of the great retreat of the British Expeditionary Force. The final sentences in the despatch, calling for increased efforts at home to balance the losses at the front, were proved to have been added by Smith himself—a fact which appeared to give equal satisfaction to his friends and his enemies.

After seven weeks he resigned. He had set the Bureau on its feet; it was now functioning properly, and he desired to undertake active service at the Front. Soon after he left London, a case came on in the Law Courts in which he was to have appeared. "My friend, who was Mr F. E. Smith, K.C., and is now Major F. E. Smith, was briefed in this case," one of the counsel explained to Mr Justice Darling. "I should think he is General F. E. Smith by now," commented the judge pleasantly.

He was attached as Intelligence and Recording Officer to the Indian corps in France. He remained with the corps until after the battle of Neuve Chapelle, by which time he had risen to Lieutenant-Colonel and had been mentioned in despatches. The result of his work as its historian may be read in the volume that he wrote with his

successor, Colonel Merewether, entitled *With the Indian Troops in France.*

General Sir James Willcocks, who commanded the corps, has put on record his impressions of his Recording Officer. "F. E. is a keen soldier at heart," he wrote. "He had no opportunities of doing anything but his own job, but to do that he never failed to accompany me on all kinds of missions. On one of these occasions, when he accompanied me in the trenches, his stature was nearly the cause of some other than he filling the place of Attorney-General in the Government; and rather in the spirit of a schoolboy he was very often away in places where business did not carry him: one day his horse was shot under him, but he turned up unhurt, and was always in the highest spirits." When Smith left, General Willcocks remarked that "it was sad losing F. E., who had always been a most cheery companion, and for whom I had established a high regard, but we were fortunate in having had him with us so long."

The following anecdote comes from the same source. During the battle of Neuve Chapelle Smith had pulled up his horse at the roadside to watch a procession of German prisoners file past, guarded by Indians. Suddenly one of the prisoners broke the ranks and ran up to him, crying, "Mr Smeeth, oh, Mr Smeeth, I am so glad to see you

F. E Smith, K C, M P By "Spy

again!" Smith asked him who he was. "Oh, Mr Smeeth," he replied, "do you not remember me? You saved me in the —— case in London. Well, a few days ago I was sleeping so quietly in my house when I received the order to come to the War, and, before I could realise where I was, I found myself near this horrible place, and suddenly we were fighting, and I saw Indian soldiers right over our trench, and when I looked back there were more Indian soldiers behind me; and I looked along our trench and saw all our soldiers throwing away their arms. And so, Mr Smeeth, not wishing to be peculiar, I also threw down my arms, and, Mr Smeeth, here I am. Oh, save me again!"

General Willcocks has also set on record in another book that "F. E. was an extraordinarily attractive personality; he could say in one pithy sentence what others would take a page to describe; and it was, perhaps, this very gift that secured him some enemies. . . . He is a resolute man, who, if he had started as a soldier, would assuredly have risen high, and, if he had had the opportunity, would have reached the highest rank." Clearly the old-standing antipathy of professional soldiers for the men they habitually describe as "damned politicians" does not hold in Smith's case, and this testimony to his innate military qualities may be taken as both serious and superlative praise.

"Smith," wrote General Willcocks, "was held in high esteem by Lord Kitchener, who frequently consulted him on important questions." If anything, this tribute, remarkable enough, understates the case. Lord Kitchener did not accord his confidence easily, but he gave it whole-heartedly to Smith. As Director of the Press Bureau Smith conferred every day with the Minister for War, except when the latter was in France. Their mutual liking and respect grew with each meeting. Their intimacy did not cease when Smith went overseas; they corresponded on the varying phases of the situation and, whenever Smith came home on leave, they dined together. When Smith entered the Government their relations became even warmer. Kitchener said more than once to his intimates, after a tiring round of Cabinet meetings, "F. E. has been a comfort again in Cabinet to-day." They agreed on so many points of policy—the propriety and necessity of conscription not least—and Smith's persuasive eloquence was a supreme reinforcement for Kitchener's arguments. Smith felt Kitchener's death deeply, and no finer memorial to the dead soldier has been penned than the last sentences of his essay on Lord Esher's unfortunate monograph, which begins the first volume of *Points of View*:

"We cannot do better than take leave of the great man of whom he writes at this moment of glittering

triumph. Not ours to follow him months later into the Northern mists, whence, with the loyal and chivalrous Fitzgerald, he voyaged, still for England, upon the last journey of all. Who knows what pictures raced through that driven brain in the dreadful moment of realised doom? Many, I suspect, of the fierce blue skies and scorching deserts of the East; some, perhaps, of Broome and the roses, where never should be pleasaunce for their master; most of all, be sure, of that England which he steadfastly and ardently loved . . . and then the black icy breakers of the Western Orkneys . . . and a great and valiant heart extinguished for ever.

"The Trumpet's silver sound is still,
The Warder silent on the Hill."

In May 1915 the first Coalition Government was formed, and Mr Asquith recalled Smith from France and offered him the post of Solicitor-General. Thus his first Government office, long foreshadowed by his Parliamentary promise, came to him from the hands of one of his political opponents. He accepted the offer, and was knighted on appointment.

In November 1915 he succeeded Sir Edward Carson, who had resigned, as Advocate-General. Sir George (now Viscount) Cave became Solicitor-General, but he did not accept this office until a

private conversation with Smith had convinced him that his superior colleague was a man deserving his respect and his co-operation. One of the first acts of the new Attorney-General and Solicitor-General was to waive a large proportion of the usual revenues of their offices. This patriotic action reduced by five thousand pounds Smith's already greatly diminished income. Political advancement had been an expensive enterprise for him, for it meant abandoning his magnificent private practice at the Bar. It is not generally known that one of his first acts as Attorney-General was to arrange for the opinions of the law officers to be printed for private circulation to Government departments. This valuable innovation lasted until the Geddes campaign of intensive economy killed it in company with many other valuable official publications.

The Asquith Cabinet fell in December 1916, and Mr Lloyd George took office. He at once offered Smith the post of Attorney-General in the reconstituted Cabinet. Sir George Cave became Home Secretary and Sir Gordon (now Lord) Hewart became Smith's Solicitor-General. Like his predecessor, Sir Gordon Hewart found Smith's collaboration stimulating and friendly. Smith was always generous in appreciation, and their relations were most cordial, but an amusing story is

told to illustrate the widely divergent personalities of the two men—Smith's energetic directness and Hewart's tendency to a somewhat prolix indecisiveness. "Well, Gordon," said Smith one afternoon, "what on earth are you up to? I've signed six opinions this morning, and I'm told I can't do any more because you're not ready." "The fact of the matter is, Mr Attorney," replied Hewart, "that I have been so fully engaged in court that I have had no time to devote to paper."

While Smith was a law officer of the Crown he was overwhelmed by the unprecedented labours of his task. The enormous scope of Government activity during the War cast burdens on him that none of his predecessors had known. He threw himself into his work. The brilliant epigrammatic advocate became a serious and single-minded departmental officer. It was his duty to control the whole legal work of the Government, to present the Government case to the courts without any tricks of advocacy, and to see that it was properly conducted there and not fought out unless there was a very serious reason. Smith, while he was Attorney-General, shone in arguments of pure law, even though, to a large extent, the laws were the fruit of the new emergency legislation of the War period, which to a great extent superseded the old English common law in which he had been trained.

There were whole weeks when he was occupied incessantly with prize cases in the Privy Council. At nine o'clock in the morning, Sir Charles Mathews, the director of public prosecutions, would attend Smith in what he called "*le lit de justice*," and occupy him with important matters of Government prosecutions until it was time for him to go into court. The moment the Court rose he would be engaged with consultations and urgent departmental matters until after midnight. This went on day after day at frequent intervals during the War; no man ever sunk his private life so completely into the affairs of his office.

The Halakite case was one of his greatest triumphs in this period. Sir Theodore Cook and his associates considered that the claims of a new explosive in which they were interested had been improperly overlooked by the authorities, and their complaints led at last to the appointment of a Government commission to investigate the matter, with Mr Justice Shearman as chairman. The whole of the material before the Court was printed before the inquiry began, and the case both of the inventor and of the Government was based on these documents. Yet Smith, in a speech of two hours, bringing forward no evidence but what was already printed and known to every party to the case, succeeded in convincing

everyone that the Government was right in rejecting the inventor's claims. The rest of the inquiry was taken up with explanations from Sir Theodore Cook and his friends as to their good faith, which was indeed never questioned. Thus Smith, by applying his analytic mind to a mass of already published documents, was able to set them out in so clear a light that the very men who based their case on these documents saw that they were utterly mistaken.

Mr H. Fletcher Moulton, in his life of his father, Lord Moulton, who was responsible for the official rejection of the Halakite claims, wrote: "I doubt if there is any similar instance of an opening speech leading to the practical admission of the justice of the case so opened, even before any evidence has been called."[1]

The other more sensational episodes in which he was concerned as a law officer were the Casement Treason Trial of 1916, the Southern Rhodesian Land Commission of 1919, the Wheeldon case of 1917 for conspiracy to murder Mr Lloyd George and other Cabinet ministers, and the prosecution of certain shop stewards under the Defence of the Realm Act in the same year for fomenting trouble in the engineering trade. This last case, as will be seen later, was prominently recalled in

[1] *The Life of Lord Moulton*, p. 258.

connection with the fall of the Socialist Government seven years afterwards.

Smith had, in addition, his military legal work. He had to improvise an adequate justiciary system into a sphere where nothing of the nature or on the scale necessitated by war-time conditions existed. How well he succeeded in this may be seen from a letter addressed to him by the War Office on August 7, 1919:—

> My Lord,
>
> I am commanded by the Army Council to place on record, on the occasion of the termination of the War just concluded, an expression of their cordial thanks for the service you have rendered in connection with the legal work of the Army, and especially the revisions of findings and sentences of Military Courts-Martial, a duty which, in addition to your other heavy work, you have undertaken for a period of four and a half years on behalf of five successive Secretaries of State for War. In the course of that time you have given decisions in many thousands of cases—a task the performance of which the Council know to have required much time and careful attention in the difficult

and entirely unprecedented circumstances created by the enormous expansion of the Army to include the majority of the able-bodied manhood of this country, of the most widely varying types, serving under completely novel conditions, and, unlike the old Regular Forces, with but little experience of Army discipline or much appreciation of its supreme importance.

In such circumstances, while maintaining the main principles of military law and standardising the decisions of the military tribunals, your influence was always exercised on the side of humanity, and the Council trust that the successful result of your work will be to you, as it is to them, a source of considerable satisfaction.—I am, my Lord, your Lordship's obedient servant, R. W. BRADE.

The ability and industry with which Smith discharged the vast and difficult duties devolving upon him may best be judged from Mr Lloyd George's statement in 1919 that the department for which, in those anxious times, Smith was responsible had worked with such smoothness that it was the only great department of State which had never consumed even five minutes' time of the War Cabinet.

This fine achievement undoubtedly laid the foundation of Smith's future career in high office. He was recognised by the leaders of all parties as not only a valuable political ally and a most dangerous opponent but also an exceptionally gifted administrator.

This was, indeed, the most strenuous period of his life, and he suffered for a considerable time afterwards from the effects of the overwork. His promotion was attended by a minor Parliamentary comedy. Certain pettifogging Radicals, led by the late Sir Arthur Markham and Mr Hogge, discovered that the new Attorney-General had laid himself open to penalties amounting to £140,000 by sitting and voting in the House after his new appointment. They insisted on raising the matter, and opposed a Relief Bill hastily introduced by the Government. They pressed their opposition to a vote, with the curious result that, while 158 members voted for the Bill, not a single person passed the two tellers in the other lobby.

America entered the War in the spring of 1917, and in December of that year Smith was sent to the United States and Canada to take part in the discussion of certain important legal matters, and, what was even more important, to help to explain to the vast democracy of America the view-point of Great Britain and the Allies. It was not the

first time he had visited the United States, but never previously had he covered such enormous distances in that country. In two months he travelled nearly fifteen thousand miles, from Liverpool back to Liverpool. He addressed forty-eight meetings, sometimes five in one day, and well over 100,000 people must have listened to him. He arrived in New York on Christmas Day, and a week later his baronetcy was gazetted in the New Year Honours' List. This was the first time that an Attorney-General had been advanced from a knighthood to a baronetcy during his term as a law officer.

Smith naturally came into contact with many influential people both in the United States and in Canada. He visited President Wilson at the White House and talked to him for twenty minutes, during which period both men remained standing. It is not suggested, however, that this formality prevented a cordial interchange of views.

This must have been a most interesting meeting, for the two men, both brilliant scholars who had achieved fame and high rank in politics, represented almost opposite philosophies of action.

Smith met also Colonel House, the President's *fidus Achates* and his unofficial channel for communication with the leading personages in Europe, who has since become known to a wider public as the author of a surprisingly frank diary of his

experiences. In view of the revelations in Colonel House's volumes—many of them tending towards indiscretion—it is amusing to read, in Smith's published account of his American tour, these words: "Colonel House received us with the greatest civility and good nature. I cannot, being unable, under existing conditions, to consult his wishes, presume to set forth any part of the conversation. I regret this circumstance very much, for all he said was marked by great sagacity and persuasiveness."

The late President Roosevelt was another dynamic American with whom Smith came into contact on this visit. They addressed meetings together, and Smith has set on record in his book the strong impression this great man's personality and eloquence made upon him. And, to mention no others, there was Mr Samuel Insull in Chicago. This remarkable man is one of those English boys who went to America to seek fortune and who has succeeded in his quest beyond any possible expectation or hope.

During his visit to the United States, Smith evoked the same conflicting emotions among those with whom he came in contact as in England. A section of the officials and the public resented his brilliance and his youth. Others were dubious whether real ability underlay his epigrammatic bonhomie. The Irish, in particular, took every

opportunity to inconvenience him. One Irish-American newspaper, the *Boston Post*, published a fictitious interview in which he was reported to say, "Nothing ever gave me greater delight than the execution of Casement." A howl of indignation went up from the Irish parts of America before Smith was able to repudiate this most obvious falsehood.

The New York Bar Association conferred honorary membership on him, and, in a graceful reply, Smith said that one day he might be glad, in view of the vicissitudes of a political career, to take advantage of this. There is no reason, however, to suppose that this was meant to be taken too literally.

It is of considerable interest to note that, in his address to the Association, Smith in guarded words predicted the grounds on which a year or two later the United States were to reject the proposals for entering the League of Nations that President Wilson sponsored. "I am not here," he added, "to disparage the most noble ideals which, with restrained but penetrating eloquence, your President has uttered for the encouragement of his Allies . . . but I am here as a lawyer addressing lawyers. We are careful and cautious men, and if we do not apply the touchstone of critical analysis, what can be expected from the rest of the population?" One or two American

newspapers objected. The bitter lesson of President Wilson's failure has since made them eat their words.

Smith always made it a rule never to visit the United States without also going to Canada. He did so on this occasion, and spent a few days in Toronto, Ottawa, and Montreal, renewing old acquaintances, making speeches, and watching the enormous effort of the Dominion, whose troops have achieved undying fame on the battlefield, in the not less important spheres of work at home.

In July 1918 he was offered the post of Lord of Appeal in Ordinary, on the death of Lord Parker. The post carried a life peerage and a salary of £6000 a year. Smith refused it.

After the Armistice election of 1918 Mr Lloyd George decided to revert to earlier constitutional practice and to leave his Attorney-General outside the Cabinet. It is really a new thing for the Attorney-General to hold Cabinet rank; it began with the desire of Mr Asquith in 1912 to compensate Sir Rufus Isaacs (now Lord Reading) for being passed over by Lord Haldane for the post of Lord Chancellor. Although it was stated that Sir Rufus Isaacs' Cabinet rank would not be a precedent, it did actually become one, and Sir John Simon, Sir Edward Carson, and Smith himself automatically assumed Cabinet rank with the office of Attorney-

General. Sir Douglas Hogg to-day discharges both duties.

Smith was prepared for Mr Lloyd George's intended change, and, when at Downing Street the Prime Minister, then forming the new Government, offered him his old office as Attorney-General, Smith said, "What about my seat in the Cabinet?" Mr Lloyd George made it clear that he did not propose to have his Attorney-General in the Cabinet, whereupon Smith refused the post and, expressing his intention to return to private practice, offered Mr Lloyd George his support as an independent member of Parliament. The Prime Minister immediately offered Smith the Woolsack, a post the tenancy of which had not for an instant occurred to him. He had to give his reply, however, by breakfast the following morning. The Lord Chancellor, of course, holds Cabinet rank.

The problem was difficult for Smith. The Woolsack, although an office of great distinction, carrying with it a peerage and the custody of the King's conscience, was considered a political cul-de-sac. Sir John Simon before the War had refused the Woolsack, though he must often have bitterly regretted it since, and chose instead to be Home Secretary. It meant, moreover, leaving the House of Commons, where Smith was so much at home, for the unaccustomed atmosphere of the House of

Lords. He did not hesitate, however. The lure of Cabinet rank and its responsibilities was the deciding factor, and he saw no sufficient cause why the Woolsack should close his political career. He determined once again to prove himself a consummate adventurer and to break through an unreasonable tradition.

After ten minutes' conversation with Mr Winston Churchill the next morning at 10 Downing Street, before the breakfast to which Mr Lloyd George had invited them both, Smith was satisfied with the decision he had reached on the previous night.

He accepted, therefore, the post of Lord Chancellor, and was granted a patent of barony in February 1919. He took the title of Baron Birkenhead from his native town, thus disappointing the humorous forecast of Mr Justice Bigham, when the latter took the title of Lord Mersey, that he was "leaving the Atlantic for F. E." The new peer made his maiden speech in the Lords in the same month. The subject was labour unrest, and a Parliamentary reporter, grateful for the contrast with the habitually tedious and inaudible speeches in the Upper House, recorded that the new Lord Chancellor was "youthful-looking in his wig and gown, and refreshingly virile and clear."

The appointment was received in certain circles with reserve. They thought Smith a mere political

soldier of fortune, or affected to do so, and complained that his elevation to the Woolsack was a "job," comparable in its nature—while exceeding it in impropriety—with the appointment of Mr Justice Darling as a judge by Lord Halsbury years before. They had forgotten in the energetic and hard-hitting Parliamentary fighter the brilliant law student of earlier days; and his magnificent work as Attorney-General was too little known to the outside world. There is no doubt that the protests hurt him, but he did not show this publicly, choosing rather to allow his ability to justify his new appointment.

Even the Conservatives, who might be expected to recognise the new Lord Chancellor's qualities, were divided. A deputation, drawn from the dissentients in their ranks, is said to have approached Mr Lloyd George with a protest. "Gentlemen," replied the Premier, "I knew you would object to a Welsh Lord Chancellor. I did not wish to bring another Scot into the Cabinet. If you know of a better Englishman for the post than F. E., I shall be glad to have his name." The deputation retired.

It is noteworthy that the *Times*, which was critical of the appointment and has never been notably friendly to Smith—Lord Birkenhead, as he must henceforward be called in these pages —made ample amends on his retirement a few

years later, admitting that his occupation of the post had been an unqualified success.

The years during which he sat on the Woolsack were particularly difficult. The Coalition Government had to face increasing opposition at home from the irreconcilables on either side. Its internal problems were gigantic. The army had to be demobilised; labour was restless; housing was a constant source of preoccupation; agriculture was in a critical position; Ireland was a prey to civil war. Abroad the whole world was in the melting-pot, and the British Cabinet had to take the lead in the unprecedented readjustments that were the subjects of innumerable conferences and negotiations. Lord Birkenhead found that the official duties of the Chancellorship occupied him many hours every working day; while, in addition, Cabinet meetings, conferences, public speaking, and the political leadership of the Lords, which devolved on him, added to the strain. No wonder that at times his manner was such as to raise the eyebrows of more leisured and punctilious members of the Chamber. The new Lord Chancellor was on one occasion gravely taken to task for placing his foot on the Woolsack while addressing the House.

Then the terrible bathroom scandal burst on an amused world. Lord Birkenhead discovered that the Lord Chancellor's apartments at Westminster

were extremely old-fashioned. There was no lift and only one bathroom for the whole establishment. The Office of Works undertook to introduce a lift and another bathroom. The work was put in hand. But when the estimates were presented to Parliament, his mosquito enemies saw their opportunity. They challenged the vote, affected indignation that at a time of grave national financial stress the alterations had already begun, and made themselves sufficiently insistent that cleanliness should give way to economy to make the Government yield and stop the work. As a result the Lord Chancellor's apartments are still Victorian in their discomfort, though the second bath has been put in, and Lord Birkenhead continued to live in his own house.

His political achievement during his tenure of the Woolsack is part of the history of the Coalition Government. When this is finally written, his share will be found not least in the credit that must be attached to it. His legal work was not less important. "No Lord Chancellor in living memory has been so active and done so many things," was the comment of one of the permanent officials of his department, who added that "it was an education to see him have conduct of Government Bills in committee." His knowledge of law, his remarkable memory, and his experience of the Bar

aided him to decide the merits of many remarkably difficult cases.

It will certainly be interesting to mention the principal cases on which he delivered judgment as Lord Chancellor. I shall ignore those, however, whose importance is primarily legal, and mention only such as have created some public stir.

The first case of moment was *Weinberger* v. *Inglis*, concerning the right of the Stock Exchange to exclude from its premises members of alien enemy birth but naturalised in this country. Lord Birkenhead held (April 7, 1919) that this right was established in law.

Next came the case of *Bourne* v. *Keane* (June 3, 1919), involving the bequest of sums of money for Masses for the repose of the testator's soul. The new Lord Chancellor's judgment in this case convinced all doubters in his profession that he was a great lawyer.

The Lord Advocate v. *the Marquis of Zetland* (November 11, 1919) turned on the interpretation of points of mediæval Scots law. Lord Birkenhead handled Scots law like a master, and won the praise and respect of the greatest living authorities on the subject.

The Director of Public Prosecutions v. *Beard* (March 5, 1920) laid down how far drunkenness can be pleaded as a defence to a criminal prosecution.

The Dunlop Rubber Company v. *Dunlop* was concerned with the objections of Dr Dunlop to pictorial advertisements in the newspapers which he claimed held him up to ridicule and were therefore libellous. Owing to the death of Dr Dunlop the case did not go its full length, but Lord Birkenhead delivered a judgment on an interlocutory application (December 20, 1920).

The appeal of Archdeacon Wakeford, who was suspended by his bishop for immorality, came before the House of Lords on April 26, 1921. Lord Birkenhead's judgment, although long, was short by comparison with the mass of evidence. After clarifying the complicated issues and marshalling the essential facts relating to them, he dismissed the Archdeacon's appeal.

Gaskill v. *Gaskill* (July 29, 1921) was a petition for divorce which turned on the fact that a child was born 331 days after the husband had last seen his wife. The Lord Chancellor in his judgment declared that divorce could not be granted on this ground, and wound up by advising the parties to come together again. His advice was not taken, however, and the wife later obtained a separation from her husband. The *Gaskill* decision has been much criticised, as it was understood to mean that the child was the child of the petitioner. This was not the Lord

Chancellor's point. He was called upon to deal with a suit of divorce on the ground of a wife's alleged adultery, the only evidence of adultery being that a child was born 331 days after the husband and she had last cohabited. The question before the Lord Chancellor was whether it was impossible for the child to be the child of the husband, so that a Court would be justified in inferring adultery. Lord Birkenhead held that the medical evidence called was insufficient to show that it was impossible; consequently the birth was not such that adultery must be inferred from it.

Sutters v. *Briggs* (October 25, 1921) decided that a man who paid a gaming debt by cheque was entitled to recover the amount by the Gaming Act. This decision led to a change in the law dealing with betting.

The "*Volute*" case of December 15, 1921, dealt with a collision at sea. After Lord Birkenhead had delivered judgment, Viscount Finlay, his predecessor on the Woolsack, said, "I regard the judgment to which we have just listened as a great and permanent contribution to our law on the subject of contributory negligence and to the science of jurisprudence." Lord Shaw of Dunfermline, who followed, said, "I would venture to concur with my noble and learned friend as to the quality of the judgment." No such

tribute as this to a Lord Chancellor's judgment has been paid in recent times.

Presiding over a Committee of Privileges on June 27, 1922, on Lady Rhondda's claim to be summoned as a peeress to the House of Lords, Lord Birkenhead ruled that, notwithstanding the Sex Disqualification Act, she was not entitled to sit in the Lords.

The case of *Rutherford* v. *Richardson* (November 3, 1922) was of a curious nature. A Mrs Rutherford had divorced her husband, naming a Miss Richardson as co-respondent. The husband did not appeal, but the co-respondent did, and won her case. The point now arose whether the divorce could stand, although the divorced party had not appealed. Lord Birkenhead decided that the divorce decree must, nevertheless, be set aside. Mrs Rutherford was thus left tied for life to a homicidal lunatic. "To some," said Lord Birkenhead at the end of his judgment, "this may appear a harsh, and even an inhuman result; but such, my Lords, is the law of England. . . . It rests with Parliament (if and when it thinks proper) to end a state of things which in a civilised community, and in the name of morality, imposes such an intolerable hardship upon innocent men and women."

The Grand Trunk Railway Company of Canada

v. *The King* (November 10, 1922) raised the question of the amount of compensation due to the shareholders of this company in view of the taking over of the Grand Trunk Pacific system by the Official Receiver. The Lord Chancellor upheld the award of the Courts that no compensation was due.

As an abiding monument to his period of office as Lord Chancellor stands his Law of Property Act of 1922. Among other far-reaching results, this Act abolished the law of copyhold and went a long way towards assimilating the law relating to land ownership with that relating to private property. It abolished such venerable institutions as the rule in *Shelley's* case; it remodelled the law of perpetuities; it abolished the law of primogeniture, and reconstructed many minor laws. Its effect will be that the registration of title in regard to the property of land will take the place of the present complicated and expensive system of conveyancing. In perhaps a generation, when once certain inevitable points of interpretation have been cleared up in the Courts, land will be bought and sold as easily as stocks and shares are now.

The Act was, for this very reason, regarded with hostility by some lawyers, who feared that its passing would mean a loss of business to them. It is likely, however, that what they may lose on individual transactions—to the advantage of the parties con-

cerned—they will gain by increased opportunities. "Small profits and quick returns" will now become the motto of solicitors concerned with the transfer of landed property.

The passing of this Act into law was a triumph for its sponsors. There was only one division on it in committee, and none at all in the report stage. Sir Leslie Scott, K.C., in whose chambers Smith had begun his career and whom he had later persuaded to enter politics, had a large share in drafting the Act, and, as Solicitor-General, he introduced it into the Commons. Lord Birkenhead skilfully piloted it through the Lords.

The best legal comment on "Lord Birkenhead's Acts"—this designation in now in current use, as it is recognised that the other Acts which follow that of 1922 merely consolidated the original achievement—is shown in the dedication by Sir Benjamin Cherry, the greatest conveyancer in England, of his learned new edition of *Prideaux's Forms and Precedents in Conveyancing* in 1926, as follows:

To
The Right Honourable
FREDERICK EDWIN, EARL OF BIRKENHEAD,
His Majesty's Principal Secretary of State for India,
Formerly Lord High Chancellor of Great Britain,
To Whose Parliamentary Genius the Passing of the Law of Property Act, 1922, is by General Assent Attributed.

And the first paragraph of this standard book reads thus:

"The Law of Property Act, 1922 (Lord Birkenhead's Act), as amended by the Law of Property (Amendment) Act, 1924, and the six following consolidating Acts, namely, the Law of Property Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, the Land Charges Act, 1925, the Administration of Estates Act, 1925, and the Land Registration Act, 1925, will be rightly associated with the name of the Earl of Birkenhead. But for his brilliant advocacy, backed by a command of the English language second to none, the chance of passing an omnibus Bill leading to such an epoch-making evolution in the law of property and conveyancing would have been meagre, even with the potent assistance of Lords Haldane and Buckmaster."

Lord Birkenhead suffered, during his Lord Chancellorship, from several minor illnesses, caused directly or indirectly by overwork. In 1920 a cold in the ear resulting from a dive from his yacht gave him trouble, and he was forced to take a short holiday. In 1922 his eyesight began to fail. He found he could no longer read without difficulty. When he asked for a short leave of absence from the House of Lords his request was made the occasion of a demonstration of sympathetic admiration by his colleagues. Lords

Curzon, Buckmaster, and Salisbury all took the opportunity to express their respect for the Lord Chancellor. But even his holiday did not find him idle, for he took his yacht through the French canals to the Mediterranean and there met and entertained some of the delegates to the International Conference at Genoa. Five is a fair estimate of the number of diners whom his yacht can with comfort accommodate, but he characteristically entertained a score of guests to dinner by enlisting secretly the aid of the staff of a local hotel. Mr and Mrs Lloyd George and their daughter, and other members of the British delegation were among those who were astonished by the apparently inexhaustible resources of their host's small vessel.

He then went for a cruise on the Mediterranean which nearly brought his career to an end. The engines of the yacht failed in a storm, and the wind was driving the boat on to a rocky coast. Lord Birkenhead, who, in deference to his oculist's orders, had given up smoking and whose nerves were suffering from the deprivation, joined the captain on the bridge. The seriousness of the position was explained to him. Death seemed a matter of minutes, for there was no hope of rescue. Lord Birkenhead, whose conscience was sufficiently clear for him to face his end with equanimity, invited the captain to join him in a last bottle of champagne. "And,

steward," he added, "if you have a box of cigars on board, open it and bring it here!"

The bottle and the box arrived and, with no reason now to worry about his eyes, Lord Birkenhead joined the captain in a drink and a smoke. Meanwhile the dread rocks covered with spray came nearer and nearer.

Minutes passed, while neither man cared to look coastwards. At last Lord Birkenhead ventured on a glance. He could hardly believe his eyes, for the yacht's position seemed not to have altered. A sudden hope came to him as he held up his handkerchief. It fluttered in the wind—away from the coast! The wind had changed and they were saved. Lord Birkenhead has never since abandoned his cigars, but, despite the oculist's warning, his eyesight has suffered no permanent injury.

Despite these occasional maladies he continued his usual energetic interest in sport. He played for a Parliamentary lawn-tennis team in 1921, and showed himself efficient, if erratic. One evening he was dining in the Senior Common Room at Christ Church, Oxford, when doubt was expressed of his continued capacity as a runner. A wager was arranged between him and "Bill" Milligan, the Oxford runner, who was present. The Lord Chancellor bet £15 to £5 that he would run round the quadrangle of the college four times

before Milligan circled it eight times. The two set off in evening-dress and pumps. Before Milligan had completed his sixth round the Lord Chancellor won his bet. He also took up golf, developing at that game a whirlwind style peculiar to himself and curiously disconcerting to more orthodox opponents. He rarely missed an important Rugby match or athletic meeting in London, and—a link between this and his work—it was through catching in his arms at the winning-post the exhausted form of Bevil Rudd, the Oxford and Olympic champion quarter-miler, at Queen's Club in 1922, that the latter became for some time his private secretary.

An idea of the strenuous manner in which the Lord Chancellor combined work and exercise may be gained from a published account of a typical week-end. "Friday afternoon, played tennis with his brother Harold (unsuccessfully) against a pair of the Oxford University team. Friday evening, addressed meeting of new Carlton Club in Wadham College, Oxford. Saturday morning, flew to Paris. Saturday afternoon, attended meeting of Imperial War Cabinet to discuss German terms. Sunday morning and evening, more meetings. Sunday afternoon, went with Mr Balfour to finals of lawn-tennis tournament in Paris. Monday morning, flew back. Had a forced landing

this side of Channel. Monday afternoon, delivered considered judgment in House of Lords." On one of his journeys to Paris, by the way, to attend the Peace Conference, a French taxicab-driver nearly involved in one smash Lord Birkenhead, Lord Reading, and Lord Hewart. Only by a hair's-breadth was it that England did not lose a future Secretary of State for India, a future Viceroy, and a future Lord Chief Justice.

In July 1921 Baron Birkenhead became Viscount Birkenhead. The grave rumour spread a week or two later that he was celebrating his promotion by growing a moustache in the country. He shaved it, however, before his return to London, and thus allayed the anxieties of the newspaper caricaturists. It was in this year, too, that gossip chronicled his arriving one evening at the Savoy Hotel in a brown lounge-suit and demanding a supper-table. After a few moments' indecision, it is recorded, the scandalised waiters permitted him to break through yet another established social custom.

In October 1922 he was invited to stand as a candidate for the Rectorship of Glasgow University. His opponents were Sir John Simon, in the Liberal interest, and Mr H. G. Wells, the novelist (whose novels he enjoys as much as he dislikes his various political views), standing as a

Socialist. The result of the election was that Lord Birkenhead received 1165 votes, Sir John Simon 530, and Mr Wells only 353. The victor's Rectorial address, which contained the famous references to "glittering prizes" offered to "those who have stout hearts and sharp swords," was scrappily reported in the Press and led to considerable comment among people unable or incompetent to read the full text. Some extracts from this speech, which in essence represents its maker's philosophy of life, will be found on a later page.

At the end of 1922 Viscount Birkenhead became an Earl. He was, it may be mentioned in passing, treasurer of Gray's Inn in 1917 and the two following years, and became High Steward of Oxford in 1922.

The Honourable Society of Gray's Inn celebrated his appointment as Lord Chancellor with a House Dinner on May 9, 1919. Judge Mulligan, K.C., presided; the Lord Chancellor of Ireland, Master Sir James Campbell, Bart., came over from Ireland, so that both Lord Chancellors were present; and the gathering of Benchers, barristers, and students was considered unique in the history of the Inn.

Master Mattinson, K.C., proposed Lord Birkenhead's health, and one portion of his speech, addressed directly to him, was as follows: "I can

imagine your successor saying, That is the youthful Lord Birkenhead, who was Lord Chancellor in the great days of King George V—because two hundred years hence they will call these days great days—that is the youthful Lord Birkenhead who held great office in the days when everything that England had and stood for was put to the touch 'to win or lose it all.' The story of the young Chancellor, he will continue, is the romance of a young man who went up from a provincial town to Oxford and swept the board of every possible academical distinction, then went to the Bar of England and at the Bar at once won great and phenomenal success, who afterwards ventured upon the stormy sea of politics and in the House of Commons forthwith stepped into the front rank. And then I can imagine your successor, possibly with an added note of pride in his voice, saying: When the testing time of the Great War came, in the anxious days of the autumn of 1914, this young man, then almost at the head of the Bar of England, making a princely income, cast £20,000 a year to the winds and himself went to the War. Called home for public duties, he entered upon the office of Attorney-General, filling it with eminent distinction and public advantage at the time when that office made more imperious demands upon the highest powers of mind and judgment of its holder than at any

No Trumps? [illegible]

ON THE WOOLSACK. 'NO TRUMPS? I DOUBT!'

other period, and finally, beating all records at the age of forty-six, became Lord Chancellor of England. I think your successor will add one more sentence. When he became Lord Chancellor, though the one criticism upon his appointment had been that as he was a brilliant advocate he could not be a good lawyer—straightway he put that criticism to an open shame by taking his place at the head of the Judicature as though to the manner born, and within three short months, by the universal testimony of the profession, established a reputation as one of the greatest Judges who ever sat on the Woolsack."

When the Coalition fell in 1922, Lord Birkenhead, in company with Mr Austen Chamberlain, refused to abandon Mr Lloyd George. The late Lord Curzon at first threw in his lot with the other Unionist Coalitionists. At a dinner-party at Mr Winston Churchill's house, at which he and Lord Birkenhead and the other Unionist Ministers were present, he definitely approved their decision to confront the Carlton Club meeting and justify their position. His parting words, as he left the table, were, "All right; I'm with you." The first intimation his colleagues had that he had "ratted" was when his letter was read out at the Carlton Club in which he said that he thought it improper for a peer to attend the meeting.

Lord Birkenhead, then, like Mr Austen Cham-

berlain, refused to join the ill-fated Die-Hard Conservative Government which succeeded the Coalition. For this he was bitterly abused by its supporters, but found no difficulty in defending his position. To the "Judas" taunt he replied succinctly that history condemned Judas for betraying his master, whereas he apparently was to be condemned for refusing to betray Mr Lloyd George. Some observers, among them the usually more astute Lord Beaverbrook, assumed that his rupture with the Die-Hards would wreck his political career, and it was then that the "principal shareholder" of the *Daily Express* wrote that Lord Birkenhead would gravitate towards Liberalism. Lord Birkenhead, however, retorted with disconcerting frankness to these criticisms and overtures that he and his ex-Coalition Conservative colleagues had done very much more for their party than any of its new leaders, and that, if they were told to leave it, they would reply, "Get out yourselves!" He referred to Sir George (now Lord) Younger, the Conservative organiser who had engineered the downfall of the Coalition, as the "cabin-boy" who had taken command of the political ship. The stinging phrase stuck, and will never be forgotten. There is no need to emphasise the fact that Lord Birkenhead's reading of the general situation proved correct, and that

the Cassandras who foretold his political demise or migration were false prophets.

There is a curious entry in the memoirs of Sir Almeric Fitzroy, then Clerk to the Privy Council, dated November 24, 1922. "I hear," it runs, "that some months ago there was a strong move within the Tory party to see Birkenhead their leader, and a large fund was subscribed to place him in a position to accept the charge; but, on second thoughts, he seems to have held aloof from prosecuting the design, and the money was returned to the subscribers."

In so far as this refers to Lord Birkenhead it is incorrect. He was never informed of the suggestion that he should place himself at the head of his party or of the collection of funds for that purpose. He never, therefore, "on second thoughts . . . held himself aloof from prosecuting the design," and I have been unable to trace any money having been collected with such an aim. Sir Almeric would appear to have been the victim of idle tittle-tattle.

On his retirement from the Woolsack Lord Birkenhead was attacked in some quarters for taking the pension attached to the office of Lord Chancellor. To this he made reply that, when he became Lord Chancellor, he abandoned an income of £20,000 a year at pre-War value for a salary of £10,000. He was now to receive a pension of £5,000. "Ask any

of the leaders of the Bar," he said, "whether, if I returned to practise at the Bar, I could not now make £40,000 a year." He agreed that a wise tradition forbade him again to practise after having been Lord Chancellor, but he pointed out that he still discharged legal duties in the House of Lords and on the Judicial Committee of the Privy Council of the utmost responsibility and importance.

Indeed, sitting as the senior law lord in the absence of the Lord Chancellor, Lord Birkenhead pronounced judgment on several cases of great public interest, though his intervention was comparatively infrequent. On July 9, 1923, for example, in the case of the *Home Secretary* v. *O'Brien*, he held that, when a writ of Habeas Corpus has been awarded, there can be no appeal from this decision. This was, of course, in connection with the arrest of certain Sinn Feiners in this country and their handing over to the Free State Government.

The Food Controller v. *Cork* (July 25, 1923) established that the Crown, in regard to its trading debts, has no particular right to be paid before any other creditor.

The case of *Cantiere San Rocco* v. *The Clyde Shipbuilding Company* (July 25, 1923), concerning the recovery of money paid for a consideration that has failed, involved a discussion of Scots law

and Roman law in relation to the same dispute. Once again Lord Birkenhead demonstrated his uncanny ability to clarify complicated issues, and his judgment aroused the enthusiastic respect of all lawyers.

The sensational *Russell* v. *Russell* divorce appeal came before him on May 20, 1924, and he ruled that neither husband nor wife may give evidence to bastardise a child born during wedlock.

Early in 1921, while Lord Chancellor, he sat as an additional judge in the Divorce Division to clear up its arrears. No case of especial public or legal importance came before him, but it was noted that he had remarkable control of the Court.

Since he became Secretary for India he has almost ceased to sit as a law lord. To do so might be undesirable, since a case in which his department was interested, directly or indirectly, might come before him. On the only occasion on which I remember him to have sat, he did so for the purpose of making a quorum.

During the whole period that he was a law officer—whether as Solicitor-General, Advocate-General, or Lord Chancellor—not a single opinion that he gave on any matter of importance was ever overruled by a Court of law. After he left office, one opinion of his was overruled.

Only once has his opinion as a judge not been

accepted by a majority of his colleagues. This was in the case of *Edwards* v. *Porter* (October 31, 1924), when Lord Birkenhead and the Lord Chancellor, Viscount Cave, agreed that a husband could not be sued for his wife's torts, but the other three law lords said that he could—although why they should say so is beyond the wit of many lawyers to understand.

I may take this occasion to quote a remark made by Lord Birkenhead at a dinner of the Savage Club. "When I am sitting in a judicial capacity," he said, "no report of any remark I have ever made has been followed by the word 'laughter' in brackets." He has, indeed, never used his position on the judicial bench to make any humorous remark. He has devoted himself exclusively to hearing the arguments, keeping them within limits, and deciding the case on its merits. No counsel has ever complained that he showed either prejudice or density, although occasionally he did not hesitate to expedite long-winded pleaders.

It may be said of him in his judicial capacity that he is intuitive rather than reasoning. That is to say, he does not fix his attention primarily on fixed legal principles, but asks himself "Is this right and just?" By adopting this attitude he sometimes runs the risk of inconsistency, but

he has discharged his functions as a law officer and as Lord Chancellor with an intense seriousness and a single-minded desire to do the right thing.

He has, in his legal work as elsewhere, a remarkable gift for generalship, both in marshalling his case and in arranging his work. He has a faculty for seizing a situation at a glance, which enables him to do quickly what other men would take days to perform. This helps to account for Mr Justice Darling's left-handed compliment that he always liked to have a complex legal case opened before him by Smith, "because it is so interesting to discover which of two fresh minds will grasp the facts first."

He has a rare genius for using other men, and he exacts unfailing accuracy from his subordinates. In his barrister days his clerk would carefully plan the next day's appointments and read them out to Smith, who appeared to be taking no notice. When he finished, Smith would say, "That won't work," and put his finger on the weak spot in the list. His secretaries in later years have had the same experience.

His trip to the United States and Canada in the autumn of 1923 was mainly devoted to addresses, lectures, and tennis. He arrived at New York on August 24, and spoke the same evening

at the Institute of Politics at Williamstown, Massachusetts, where a reference to the late President Wilson raised an unexpected storm. Lord Birkenhead said:—

> "While the name of President Wilson must always be revered by those who render homage to purposes almost superhuman, pursued with a zeal almost as superhuman, yet it must none the less be recognised that his judgment of his own countrymen was wrong, and that by the error of that judgment he became, paradoxically enough, the agent of all those post-War developments from which his altruistic mind would most specially have recoiled."

It is difficult to see how this could be construed as an insult to the memory of Wilson, but a minor political assistant of the dead President rushed into print with this criticism of it, and a small newspaper-storm raged for some weeks. Needless to say, the *Morning Post* and the *Daily Herald* agreed that Lord Birkenhead's speech had been deplorable and even dangerous to Anglo-American relations!

The next few weeks found him travelling through the United States and Canada. A local

busybody accused him of offering "nips from a private bottle" to his hosts before speaking in some Middle Western town, though why he, a stranger, should be supposed to have offered refreshment to gentlemen who possessed adjacent cellars passes comprehension.

The charge also—not denied—that his daughter, Lady Eleanor Smith, had smoked a cigarette in public led to another storm in a Main Street teacup. Another amusing incident of the journey was the would-be sophisticated remark of the Canadian interviewer who reported that Lord Birkenhead's accent was "Cambridge."

Once again he brought back with him memories of the lavish hospitality, the dynamic personalities,[1] the far-seeing philanthropy, and the illimitable opportunities for the achievement of brilliant careers, which are the hall-marks of the great democracy of the United States.

[1] Not least among these Mr Paul D. Cravath, of the American Bar, whose guest Lord Birkenhead was for a large part of his visit and whom he had had the pleasure of welcoming at a dinner in Gray's Inn during the War, and Mr Arthur Brisbane, whose speech at a banquet given by Mr William Randolph Hearst in New York, following Lord Birkenhead's, was a masterpiece of quiet but sustained eloquence.

CHAPTER V

THE first Die-Hard Government did not long survive. The resignation through ill-health and the death of Mr Bonar Law, its original and unwilling leader, weakened the Cabinet. An attempt was made in September 1923 to woo Lord Birkenhead and Mr Austen Chamberlain back into the fold, but it was premature. They were not prepared to give their support in a subordinate capacity to men who, in their opinion, had done the country a great disservice in destroying the Coalition and were now busily engaged in preparing their own political suicide. The Government fell more and more under the influence of Admiral Hall, the principal organiser of the Conservative party, and others who counselled an appeal to the country on a Protectionist platform, although it should have been as clear to them as it was to Lord Birkenhead and others that the electorate was by no means prepared for such an appeal. The result was disastrous. The Conservative majority in the Commons was thrown away. Admiral Hall characteristically managed to convert a majority of

over 9000 votes in Lord Birkenhead's old Liverpool constituency of West Derby into a minority of 2000 within a year, and thus disappeared from the forefront of politics. The Liberals and Socialists together had a majority over the Conservatives in the House of Commons, and the Liberals promised their support to Mr Ramsay MacDonald in forming a Government.

If it be a mark of true Christian humility even in the midst of life to contemplate death and a future existence, the members of Mr Ramsay MacDonald's Socialist Cabinet of 1924 must be accounted the most Christian of Socialists and of Governments. During the eight months when, precariously balanced on Liberal votes, they held power, they turned their minds to one chief purpose only—to find an issue on which they might dissolve Parliament and seek an independent majority at the subsequent election.

Fortunately for the country, their end, when it came, was due not to their courage but to their timidity. They did not force the issue; it was forced on them. Two episodes led to their downfall—the Campbell case and the Russian Treaty, with the Zinoviev letter as a background to both. The essential factor in both these incidents was the same. In each case the Government had taken a certain line. In each case the extremists in the

Socialist ranks, egged on by their colleagues in the Bolshevist camp, forced the Government to reconsider its decision and to adopt a policy more in accordance with the designs of the Third International at Moscow.

The circumstances of the Russian Treaty were almost farcical. The Socialist Government had accorded full recognition to the Soviet Government and begun negotiations for a treaty with it. There was, however, said Mr MacDonald indignantly, no question of a loan to the Russians, who had cynically repudiated all previous British loans. The meetings ended in a deadlock, and the Government announced definitely that the plans for a treaty had failed. Immediately the extremists in the Socialist party set to work to alter this situation, and Mr MacDonald submitted to their dictation. Within a few hours the Government ingenuously announced that a treaty had actually been signed and that it contained the guarantee of a loan.

The Campbell case was another train on the same lines. Campbell, a crippled ex-soldier Communist who edited a seditious rag called the *Worker's Weekly*, published an article calling upon the forces of the Crown to disobey their officers in the interests of international Communism. The law officers of the Government

advised a prosecution. The extremists in the Socialist party, however, once more took a hand, and before long they were able triumphantly to announce that the Government had decided not to prosecute Campbell. Sir Patrick Hastings, a successful barrister who sought political advancement in advanced politics and had been rewarded with the post of Attorney-General in the new administration, did indeed withdraw the prosecution.

Had the extremists remained quiet, the Government might, perhaps, have wriggled out of its difficulties. But Campbell and his friends did not disguise their glee. For the second time in a few weeks they had compelled it to surrender. Questions were asked in both Houses of Parliament. Mr MacDonald first denied with characteristic prevarication that he had advised the withdrawal of the prosecution and then admitted that he had "expressed a view" on it. This was too much even for the long-suffering Liberals, through whose support the Socialists had attained and held power. They moved for an inquiry into the circumstances of the withdrawn prosecution. The Conservatives had already put down a motion for a vote of censure, and the Socialists at one moment hoped to be able to play off the two senior parties against each other.

The Conservatives, however, decided to avert this by killing their own motion and supporting the Liberals in theirs. As a result the Government was defeated. Rather than allow the inquiry to take place, and, as well, to face a debate on the Russian Treaty, Mr MacDonald went to the country.

The Socialists had chosen their ground badly, considering how anxious they were to find a good subject for a popular appeal. A greater disaster still was to befall them, for, while the election campaign was proceeding, a copy of the notorious Zinoviev letter came into the possession of the *Daily Mail* and was patriotically circulated by it to all the other daily newspapers. It was a "very secret" message from the head of the Third International to his British comrades, instructing them how to paralyse the Army and Navy and to create an upheaval in this country. The Foreign Office had received another copy of the letter a fortnight earlier, and Mr MacDonald had already initialed an official protest to the Soviet representatives in London.

Once again Mr MacDonald prevaricated. He admitted that he had authorised the protest, but, he said, this was only a draft of the reply and he was waiting to see a fair copy. Then he said—at the insistence of his extremists—that he was not sure if the Zinoviev letter was genuine, although

clearly he, like the officials of the Foreign Office, had thought so when he put his initials to the letter of protest. Thus, for the third time in three months, Mr MacDonald sought to appease his more violent supporters at the expense of his duty.

It went badly with him in the country. Lord Birkenhead made himself the leader of the opposition to the Socialists. In every speech he made—and he made several every day—all over the United Kingdom, he forced the Russian issue before the public. A series of articles by him on this subject appeared in the *Daily Mail*, being accorded the place of honour in this most influential newspaper, and undoubtedly played a large part in directing public attention to the menace from Moscow. A small section of the Conservative party, it is true, deprecated the importance he attached to the Zinoviev letter, and unwisely endeavoured once again to raise the Protectionist flag, even in the Midlands and Lancashire, apparently forgetting that they had been decisively beaten on this very issue less than a year before. But they did no harm.

If ever a man won an election, Lord Birkenhead was responsible for the Conservative victory of November 1924. He insisted that the true issue was between the Constitution and the Third International, between Britain and Moscow. It

suited his temperament and his sense of proportion to carry the battle into the enemy's camp. In this he succeeded. The Protectionist issue was ignored, the failure of the first Baldwin Government was forgotten, and the battle raged round the Campbell case, the Russian Treaty, and the Zinoviev letter. The Socialist leaders realised who their real adversary was, and they concentrated against him. Several of them insisted that the circumstances of the Campbell case were similar to the episode in which he, as Attorney-General, had been concerned in 1917.

In May of that year a group of shop stewards had endeavoured to hinder the production of war materials. Sir Charles Mathews, the Director of Prosecutions, informed Sir F. E. Smith (as he then was) that the War Cabinet had passed a resolution directing a prosecution. Smith indignantly pointed out that no Cabinet has the right to order the law officers to take or suspend action, and demanded that the instruction to prosecute should be withdrawn and the minute excised. The Cabinet at once admitted its mistake and cancelled its action. When Smith inaugurated the prosecution, it was after full consideration of the papers involved and on his own responsibility. The case came into court, and Smith told the counsel for the accused that,

if they would give an undertaking to return at once to work, he would withdraw the prosecution and not press for a penalty. The prisoners gave this undertaking, and Smith, considering the interests of the country thus better served than by having the men sent to gaol, withdrew the prosecution.

The point of the Campbell case was exactly opposite. There the Socialist Cabinet deliberately influenced the course of justice and ordered the cancellation of a prosecution that had been duly inaugurated by the Attorney-General. In the 1917 case Smith had repelled the attempt of the Cabinet to initiate a prosecution, and himself withdrew it under certain conditions. He thus preserved intact the traditional separation of the judicial from the administrative offices of the State, the very principle which was now being compromised by the Socialists.

Largely as a result of Lord Birkenhead's lead in the country, the Conservatives were returned to power with a record majority. Mr Baldwin, again Prime Minister, offered him the post of Secretary of State for India.

Mr Baldwin's solid asset lies in his patriotism, his simplicity, his honesty—in a word, in all that makes for character. It was quite inevitable that, when once the differences which separated him from

Lord Birkenhead were removed, so that they became colleagues, two such men must become warm friends. And they have become so. Each has learnt to appreciate the qualities of the other.

The appointment came as a surprise to many, especially to those who imagined that Lord Birkenhead's previous tenure of the Woolsack must inevitably end his political career, unless he chose to occupy it once again. In general, the news was well received. The *Morning Post* and the *Daily Herald* were, of course, unfriendly, but nothing that Lord Birkenhead can or could ever do would meet with the approval of these simpletons of the left and the right. The *Manchester Guardian*, however, whose opinion counts for much in India, in view of its traditional sympathy with Indian aspirations, was extremely favourable. It recalled the new Secretary's speech in the House of Lords on the Cabinet's decision in the Dyer case in 1920, in which Lord Birkenhead, then Lord Chancellor, insisted that censure of General Dyer was demanded by the facts of the Amritsar horrors. Lord Birkenhead did not reach this view without much soul-searching. Like most other Englishmen, his first sympathies had been with General Dyer, who found himself in circumstances of extraordinary difficulty and considerable personal danger. A full examination of the facts, however, convinced the Lord

Chancellor that Dyer had lost his head and behaved in a manner which, no matter with what provocation, could not be allowed to pass unchallenged. "Is there to be a different standard for our Indian fellow-subjects from that which we would apply to any other race in the Empire?" he asked the Lords. "Is there anyone who will say that, if this assembly had consisted of Irishmen; if when the Canadian Government was dealing with the revolutionary mob that overpowered them in Winnipeg for many days; if in the case of the mobs at Glasgow which defied law and order for as long as was done in Amritsar—General Dyer had gone to the spot and had shot them down for almost as long as he had a round at his control, he would have defended him? The true view, and the only one consistent with the humanity, honesty, and greatness of the Empire, is that any of its citizens, of whatever colour, creed, or geographical position, shall feel the same confidence and certainty in the greatness and fairness of the Empire. I beg your Lordships to repel the counsels of those who hold to a military theory which I, for one, believe to have perished in the War."

The situation confronting his new office was especially attractive to Lord Birkenhead. Affairs in India were in a critical position. Its future was on the knees of the gods, of whom many

thousands exist in that country. The Montagu advances towards self-government had been variously received. The Indian extremists rejected them as not going far enough; the British reactionaries hated them as going too far. There was thus a similarity between the Indian problem and the Irish problem that had recently been settled. Each called for rare ability, firmness, discretion, and tact on the part of those called upon to deal with it. Lord Birkenhead knew that, if he came successfully out of this ordeal, he would achieve the greatest triumph of his career. As I write these lines it is too soon to say how well he has succeeded. One thing, however, is certain. The situation in India is vastly better than it has been for many years. The recent conclusion by Lord Reading of his second term as Viceroy and his return to England have been made the occasion of general congratulations on the improvement in Indian affairs. The time must come when the part Lord Birkenhead has played in Lord Reading's viceroyalty will be made clear, and it will be strange if a large share of the credit is not by general acclamation accorded to him. And the next years will be even more important. They will determine the whole course of the future political history of the peninsula, and one may safely predict that, in years to come, Lord Birkenhead's

period of office will be remembered as marking the turning-point in Anglo-Indian relations. Instead of India being a "lost dominion"—a not wholly inapt forecast of the position when he took office in the beginning of 1925—we shall find that it has been restored to the Empire in a spirit of mutual trust and of co-operation in ordered progress. This, however, must be left to later writers to substantiate.

In the summer of 1925 Lord Birkenhead held a gorgeous reception at the India Office, which was attended by most of the great figures of public life in London, and especially by those visitors from the East who were in the country. Lord and Lady Birkenhead and Lord and Lady Reading received the hundreds of guests as they filed by. Lord Furneaux, Lord Birkenhead's son, stood beside his parents. Indian princes in turbans and magnificent jewels, Arabs in their robes, with their wives' faces hidden beneath veils, Burmese, Cingalese, and other Oriental notables mingled with foreign diplomats and British statesmen, all in ceremonial dress. It was noted that Lord Birkenhead reserved a particularly hearty welcome for Mr Lloyd George, bending down to the little Welshman's ear and saying such things as wreathed in smiles the features of that gentleman, who was then in the depths of political isolation.

"Bitter?" said Lord Birkenhead to a friend

that evening about Mr Lloyd George. "Of course he's bitter. To have led the country through the greatest crisis of its career and then to be pushed into the gutter by both parties, isn't that enough to make any man bitter?"

In bringing this record of Lord Birkenhead's political career up to date, reference must be made to the General Strike that burst upon England in May 1926. The strike ended in a few days, with its complete failure and the victory of the Government. Mr Baldwin, the Prime Minister, has properly received high praise for his handling of the situation, but there can be little indiscretion now in revealing that the man who, equally with him, steered the community to victory was Lord Birkenhead.

In the negotiations immediately preceding the outbreak of the strike, the representatives of the Government were Mr Baldwin, Lord Birkenhead, Sir Arthur Steel-Maitland, and Colonel Lane-Fox, of the Mines Department. The Trades Union Congress sent Mr Pugh, its president, Mr J. H. Thomas, and Mr Swales to make the last efforts for peace. In the whole of that two hours' conference it was Lord Birkenhead who dominated the scene. The Secretary for India sought to convince the labour men that a strike would be as disastrous to them as to the country, that it

would not assist the miners, and that it was their duty to call off their threat. Both parties to the negotiations agree that his attitude was conciliatory and persuasive. He endeavoured, almost without concealment, to drive a wedge between the intransigent miners and their less than half-hearted supporters in the Trades Union Congress by getting the latter to accept a formula to which he knew the obstinate miners would not agree.[1] The proceedings were ruffled for a moment when the egregious Mr Swales, whose presence was understood to be due primarily to the extremists' anxiety that the other Trades Union delegates should be kept under watch, remarked meaningly that certain problems had been easily solved in Moscow. Lord Birkenhead turned on him and retorted that, if it came to hanging anyone from a lamp-post—this being the inference to be drawn from Mr Swales' interjection—it would not be he but Mr Swales who would be the mob's victim. Mr Thomas then interposed to offer a long-suppressed snub to Mr Swales, and the negotiations continued.

The formula Lord Birkenhead suggested as the basis for agreement at this conference would have

[1] "We [the Trades Union Congress] would urge the miners to authorise us to enter upon discussions with the understanding that they and we accept the Report [of the Coal Commission] as a basis of settlement, and we approach it with the knowledge that it may involve some reduction in wages."

averted the General Strike, even though, as was certain, the miners would have rejected it. Unfortunately, however, a strike had already begun in the *Daily Mail* office. The less conciliatory members of the Cabinet thereupon refused to continue negotiations with the Trades Union Council, although Lord Birkenhead, had he been allowed his own way, was prepared to continue negotiations to the last possible moment. He held that the orders to strike were revocable, and that, until the General Strike actually began, the Trades Union Council leaders could always telegraph the cancellation of their instructions. But he was overruled.

It has been publicly stated that, while the Cabinet were waiting for the Trades Union delegates to join one of their meetings an amusing incident occurred in which he was concerned in a minor capacity. The members of the Cabinet were sitting in Mr Churchill's room at 11 Downing Street, and Lord Birkenhead picked up a book that was lying open on the Chancellor's table. It was, characteristically, a life of Mussolini, open at a rather bad photograph of the hero. Lord Birkenhead said to Sir William Joynson-Hicks, who was sitting beside him, "He looks like you, Jix, only not so strong." The Home Secretary beamed approval, and the rest of the Cabinet smiled behind their hands. Lord Balfour,

who is a little deaf and had not heard the previous conversation, stretched out his hand for the book, glanced at the photograph, and remarked, "H'm, makes him look like an ugly old woman!"

From the moment the strike began Lord Birkenhead again became the acknowledged driving force in the Cabinet. When important parties outside, represented by the Archbishop of Canterbury, suggested that a basis of compromise might be arranged between the Government and the strikers, the Secretary for India held waverers among his colleagues to the strict line of their duty. He told them that they would deserve to have their throats cut if they came to terms with the strikers until the strike was abandoned as a failure. "Force, force, force to the uttermost!" he quoted from President Wilson, whose life he was writing. He supervised the transport of food and merchandise, which he saw to be the key to the situation, and drafted a letter to Sir Herbert Samuel, the president of the Coal Commission, who had returned from the Continent to try to build a bridge between the miners and the mine-owners, which assured him in clear terms that, whatever he did, he did on his own responsibility, and that the Government could not consider renewing negotiations until the strike was called off. The letter was signed by Sir Arthur Steel-Maitland, after it had been

approved by Mr Baldwin, but Lord Birkenhead wrote it.

A still clearer proof of his ascendancy came at the end of the strike, when, if well-informed rumour may be believed, the Prime Minister asked him to write two speeches for delivery over the wireless. One was delivered by the King, the other by the Prime Minister; both were written by Lord Birkenhead, who is said to have needed only an hour, at the end of a busy day, to dictate them.

CHAPTER VI

THERE are two Lord Birkenheads — the real man and the rather fantastic creation of hostile rumour. The real man enjoys every minute of his life with the zest of a self-confessed adventurer. Lord Beaverbrook, in the Mrs Beaton chapter of his book, *Politicians and the Press*—which was inserted, one may reasonably conjecture, to lighten an otherwise somewhat monotonous fanfare—has told us that the Secretary for India, "though a good trencherman, is not in the least interested in what he eats. He confronts the contents of his plate rather as if it were an enemy which had to be abolished." This is incorrect, for he is, in fact, a delicate eater whose idiosyncrasies in this respect are a constant source of dismay and even despair to his butler—and his cook. Just as he likes good English food—and there cannot be any man in the country who has eaten more fried soles in his life—so he enjoys good wine with an almost æsthetic appreciation of its origin, its traditions, and its literature. He drinks his port as he did at Oxford, where the cultivation of a palate is regarded as not the least

important product of academic culture. No Frenchman can teach him anything about brandy, and, in regard to beer and cider, he could argue their merits with any country farmer.

He enjoys the company of energetic men who have had romantic careers. Lord Beaverbrook is one. The two men have so much in common and have such outstanding qualities of individuality that their friendship was inevitable. They have remained friends in all the vicissitudes of politics. Their rivalry at golf, for example, has the razor keenness which can exist only between men of boundless energy and gigantic handicaps. The result of a morning's round lifts the victor to a peak of triumphant benevolence and plunges the loser into misanthropic despair.

With Mr Winston Churchill, too, he has for years enjoyed a close friendship. Mr Churchill is, after all, an adventurer too, although he started his career with exceptional advantages, which quickly paled before the fires of his own lively personality. The smoking-room of the House of Commons—an institution for which Lord Birkenhead has often expressed his admiration—used to bring him into contact with members of all political parties, and many of his old friendships that cut across party barriers had their rise there. He and Mr Churchill, for example, founded in 1911 the

"Other Club," of which much has been heard but little known. The object of the club is to dine on alternate Thursdays when Parliament is in session; its membership consists of not more than fifty, of whom only twenty-four may be members of the House of Commons. That "the names of the Executive Committee shall be wrapped in impenetrable mystery" is another of the rules, and "nothing in the rules or intercourse of the club shall interfere with the rancour or asperity of party politics." The secret Executive Committee nominates the Joint Secretaries "who shall receive no remuneration and shall be liable for all unforeseen obligations."

The first list of members comprised, first, a group of "Distinguished Outsiders," among them General Sir John French (the late Lord Ypres); Sir George (now Lord) Riddell, the cynically kindly solicitor turned newspaper proprietor, who combines extraordinary business acumen with noble qualities as a raconteur, and both with rigid teetotalism; the Marquis de Soveral, who had been Portuguese Minister and the intimate friend of King Edward and other distinguished men all over Europe—"Soveral überall"; Mr J. L. Garvin, now probably the most influential publicist in the world and editor of the *Encyclopedia Britannica*; Sir Herbert Beerbohm Tree, the actor; Mr W. H.

Massingham, the Liberal editor; Sir Charles (now Lord) Darling; Sir Francis Hopwood (now Lord Southborough); and Sir Arthur Bigge (now Lord Stamfordham). Then there were seven peers—Lord Kitchener, the Duke of Marlborough, Lord Knollys, Lord Esher, Lord Lucas, Lord Malmesbury, and Lord Ridley.

Among the original Conservative members of the club were Smith, Mr Bonar Law, Mr (now Lord) Cave, Admiral Sir Charles Beresford, Mr (now Sir) Arthur Steel-Maitland, Lord Winterton, Mr Waldorf (now Lord) Astor, Mr James Campbell, K.C.—the son of a Dublin policeman, afterwards to become Lord Chief Justice and Lord Chancellor of Ireland and Chairman of the Free State Senate and to be raised to the peerage as Lord Glenavy; and Mr Eyres-Monsell, who was one of the joint secretaries. The Liberal secretary was the Hon. F. E. Guest, and his fellow-members included Mr Winston Churchill, Sir Rufus Isaacs (now Lord Reading), Mr Lloyd George, Colonel Seely, Mr Masterman, Sir Henry (now Lord) Dalziel, the Hon. Neil Primrose, and Mr Dudley Ward. Another original member was Mr T. P. O'Connor, representing the Nationalist party.

The wine and cigar committee consisted of Smith, Lord Castlereagh, Mr Lloyd George, and the Master of Elibank (who died in 1920). Among

the present and past members of this club are the names of those remarkable brothers, Lord Northcliffe and Lord Rothermere, General Smuts (an honorary member), Lord Beaverbrook, Lord Grey, the Duke of Sutherland, the Duke of Westminster, Field-Marshal Sir Henry Wilson, Sir William Berry, Mr James de Rothschild, Sir Anthony Hope Hawkins, Mr John Buchan, Mr A. E. W. Mason and Mr Arnold Bennett, the writers, Sir William Orpen, the artist, Sir Gerald du Maurier, the actor, Sir Edwin Lutyens, the architect, and Mr Frank Hodges, the miners' leader—altogether a select and representative set of men.

The founders of the "Other Club" have also sought adventure together in distant lands.

A year or two before the war Baron de Forest invited Mr and Mrs Smith and Mr and Mrs Winston Churchill to accompany him on a yachting tour in the Levant. They cruised through the Greek islands and through the Dardanelles, to which, it is recorded, Mr Winston Churchill, unconscious of his destiny, paid not the slightest attention. During this cruise Smith wrote a poem on the Messina earthquake—a disaster the full effects of which they saw—which he described as "the poem of my life," but which was unfortunately lost on board and never replaced.

They climbed Vesuvius. The Smiths and

their host took the usual route to the top, but Mr Churchill characteristically endeavoured to take a direct path to the summit up a precipitous slope. This culminated in his having to be rescued by his fellow-travellers from the peril of slipping down to perdition.

Smith, Churchill, and his brother, Jack Churchill, went shooting in Asia Minor, and found themselves in a swamp. Three small boys who accompanied them were persuaded to carry them over a ford especially difficult to negotiate. Smith and Churchill chose the two larger boys, leaving the unfortunate Jack Churchill to flounder in the mud with the smallest. In the end, however, all were equally filthy, and the sight was to be witnessed that afternoon of a future Lord Chancellor and a then Home Secretary stripped to the waist and washing themselves and each other with a hose by which water was supplied to engines at a wayside Anatolian railway station.

During this voyage Smith gave further proof of his phenomenal physique when he swam seven miles across the harbour of Syracuse, in Sicily. Mr Churchill accompanied him in the water for the first mile, and Baron de Forest for the second; he swam the rest of the distance absolutely alone.

Lord Birkenhead is good company in any society, and no party of which he is a member

is likely to be dull, unless he is preoccupied with public business. His conversation is as entertaining as his oratory; he never speaks above or below the occasion; he is never tired and never allows himself or anyone else to be bored. At the end of a long day he will suddenly assume a new lease of energy and astonish his guests with a flow of witty, courteous, and delightful conversation. If he has not all Mr Lloyd George's serpentine powers of charm (so often dissipated when the victim emerges into the outer air), he can certainly exercise a fascination of a more abiding kind.

Mr Sinclair Lewis, the American novelist, could tell the tale of a fervid American Radical who, invited to dinner by Lord Birkenhead, went to scoff and remained to be amazed. And it takes a great deal to amaze an American Radical. What surprised him most was his host's personal dignity. He had imagined, as others have done, that one might almost slap him on the back and, with a wink, congratulate him on having brought off a sensational raid on the public life of his country. Instead, the novelist found himself with a man who has taken his career seriously and holds high office with a rare sense of responsibility; a man, moreover, who has made enormous personal sacrifices for his principles and their advancement, and who has never received a penny

from party funds towards his election and electioneering expenses.

His life has been too busy to contain many hobbies outside his work. First editions and rare books were once his delight, and he has, according to experts, a sound amateur knowledge of this subject. But it is an expensive pastime for a man discontented with mediocrity, and of late years he has been unable to indulge it. Not long ago a journalist was surprised to find among a number of books exhibited for sale at Sotheby's auction-rooms a selection from Lord Birkenhead's library. They included first editions of *Paradise Lost*, the *Faerie Queene*, *Gulliver's Travels*, the *Tale of a Tub*, the *Anatomy of Melancholy*, the *Hind and the Panther*, and James Joyce's *Ulysses*. His library at Grosvenor Gardens remains one of the most pleasant rooms in London, and contains as excellent a stock of books as any man of culture could choose for his pleasure. His second library, at his country house at Charlton, is little inferior. Reference has already been made to his unrivalled collection of speeches: his shelves devoted to Dr Johnson and to Napoleon are still waiting to be turned to literary use. Of late years, however, his reading has of necessity been confined chiefly to books about India and to State documents—few people realise what stacks of official publications have

daily to be examined by Cabinet Ministers—and to the literary productions of men of whom he is himself writing, as, for example, President Wilson. When, therefore, he feels the need of lighter literature to beguile train journeys or insomnia, he turns to such authors as Edgar Wallace, perhaps the only novelist in the world whose output is sufficiently large to compete with Lord Birkenhead's appetite for it. Edgar Wallace's unceasing ingenuity in devising dramatic situations has won Lord Birkenhead's admiration, although this is tempered by the criticism that Wallace is limited by an inability to draw attractive characters. He has been heard to say, not too seriously, that he and Wallace would be ideal collaborators, Wallace providing the plots and he the dialogue and the description of the characters. Lest, by the way, Mr Wallace and his publishers should be too well satisfied with this testimonial to his novels, I hasten to repeat a remark the Secretary for India once made in reply to someone who suggested that Wallace could not possibly write all his stories, and that, like Alexander Dumas, he must have a corps of assistants. "There are sentences in this book," said Lord Birkenhead, picking up a new purchase, "that only Wallace could have written. They are in such appalling English."

In general it may be said that Lord Birkenhead has turned from buying first editions to producing his own. He has during the last quarter of a century been a prolific author. This is not difficult to understand, since, for a man of his measured eloquence, dictation is the primrose path to authorship. He considers his subject, decides on his approach, and then dictates to a typist what needs little revision to be the complete chapter of a book. His books are really written addresses. They bear on every page the incommunicable touch of his own personality. They are as follows:—

1890. *The Haunted House* (with L. D. Barnett and L. P. Anderson).

1897. *The Story of Newfoundland.*

1900. *International Law.*[1]

1903. *Toryism until* 1832.

1905. *International Law as Interpreted during the Russo-Japanese War* (with N. W. Sibley).

[1] His *International Law* has already gone into six editions. He wrote the first before he was married; the second and third editions appeared in 1902 and 1906. It was then reprinted several times, and in 1912 a new and much enlarged edition appeared. The fifth edition was necessitated in 1918 in view of the mass of new material that had accrued during the War, and now a sixth edition is at hand. The work is universally admitted to be one of the standard books on the subject in the English language.

1908. *The Licensing Bill.*

1909. *Speeches*, 1906–9.

1912. *The Parliament Act.*

1913. *Unionist Policy.*

1917. *The Destruction of Merchant Ships* (with Dr Coleman Phillipson).

1917. *The Indian Corps in France* (with J. W. B. Merewether).

1917. *Contemporary Portraits.*

1918. *My American Visit.*

1922. *Points of View.*

1923. *Judgments delivered by Lord Chancellor Birkenhead* (admirably edited by Mr Roland Burrows).

1924. *America Revisited.*

1926. *Fourteen English Judges.*

1926. *Famous Trials of History.*

He is understood to be writing a life of President Wilson and a comprehensive work on Bolshevism, while all the time he is preparing for the book he intends to be his *magnum opus*, *Charles I, The Last Phase.*

The speech-like quality of his writing has made him a journalist of the first class. No man, I suspect, in modern times has received such large offers for series of articles, all well worth their cost to the papers that print them. He is a stylist, although he conceals his art. One finds

few dull or blunted sentences in his articles. He loves the direct, the simple, and the straightforward forms of expression. His excursions into journalism after he became Secretary for India brought him into collision with his political opponents, who professed to consider it a blot on ministerial responsibility that he should contribute to private journals. The question of his articles was raised week after week in the House of Commons. It was useless to point out that innumerable Ministers in the past—and the present—have written for papers during their period of office; useless, too, to show that nothing he wrote (unlike certain articles produced by Ministers belonging to the opposition parties) in any way revealed official secrets. The attacks became a Parliamentary nuisance, and, to save Mr Baldwin from having constantly to reply to them in the House of Commons, Lord Birkenhead voluntarily relinquished valuable contracts with certain newspapers and agreed to confine himself to writing books. It is a pity that his enemies did not dare to raise the question in the House of Lords, where he could himself have answered their attacks. But they were cautious, and reserved their complaints for a place where he could not confront them.

"Look at him in one aspect, especially in profile," wrote Mr T. P. O'Connor twenty years ago, "and

he will undoubtedly remind you of the late Fred Archer; the long, high-cheeked profile, the pallid complexion, above all, the short, scornful upper lip, all irresistibly recalled to me the great jockey as I saw him pass for a memorable second just as he was turning Tattenham Corner in his last Derby. Then, again, you look beyond Mr Smith to the Front Opposition Bench, and you see the strongly marked intellectual, powerful face of Sir Edward Carson, and you see in the strong, long, prominent noses of the two men a very great resemblance. But, curiously enough, the person of whom Mr Smith most reminds me is a character of the mimic life of the stage, and not of the life of reality. As I gaze on the smoothly brushed, abundant black hair, with not a single lock in disorder, on the well-cut clothes, the high collar and the neat tie, I am irresistibly reminded of that great scene in *Business is Business* when Isidore Izzard, impersonated by Beerbohm Tree, is smoothing the hair and hugging himself over the splendour of the young, scornful, fashionable being whom he had brought into existence."

Few busy men have retained their youth as he has done. Even now, at the age of fifty-four, he has not a grey hair visible in his head, and his face, keen as ever, is deeply bronzed. For this he must certainly thank his energetic addiction

to outdoor sport. Tennis still retains his interest. He has three courts at Charlton, and they are never idle when he is there. First-class tennis is to-day a full-time occupation, but he is a good player of the second class. At Charlton, too, he keeps half a dozen hunters, and rarely misses the opportunity to exercise them. When he is in town he may frequently be seen in the Row in Hyde Park, about eleven o'clock, sometimes riding in company with Mr Winston Churchill and more frequently with members of his own family. In fine weather he walks swiftly across St James's Park to the India Office or Downing Street, preferring this to motoring. He has never learned to drive a motor-car, an occupation that does not appeal to him. The reason is not lack of nerve—for he will, to this day, put his horse to a five-barred gate to save a detour or to set his son an example—but rather, I suspect, because motoring is too relaxing for a person of his temperament.

The officials of the Oxford Union used formally to object to his bringing his Irish terrier into its premises. He still loves dogs. When he uses his cars, or when he travels by train, he is always accompanied by one or all of his Cairn terriers—a distinguished family consisting of a father and mother (with power to add to their numbers) and a daughter. The mother invariably sleeps on his

bed, and, except on ceremonial occasions, reclines on his lap at meals. The daughter is farmed out among other members of his family, and the father, whom he has described as "the least clubbable" of the three, is occasionally sent as a special favour to the bedroom of a guest. If the mother could speak, her reminiscences would greatly assist any contemporary historian, for she is privileged to share her master's early morning reflections when, for a couple of hours, he sits up in bed, cigar in mouth, reads a dozen daily papers, and often entertains at his bedside a political associate in a discussion upon the item of the moment.

At Charlton he has several more dogs, ranging from a pair of huge Irish wolfhounds to diminutive Cairn puppies.

A dog accompanies him, too, when he goes on board his yacht at Southampton. He has lavished on the *Mairi* the supreme affection of his recent years, and she is a vessel worthy of her owner. Her own record is engraved on a brass plate at the base of her mast. It tells how she was built by the directors of Beardmore's as a wedding present for their chairman, Lord Graham, served in the Great War on patrol and escort duties, and was three times in action with the enemy. In 1919 Lord Birkenhead bought and entirely refitted her. He built a large cabin and dining-saloon on deck,

and took entire charge of the decoration, refusing all outside assistance. Even Lady Birkenhead, who has an exquisite taste in furnishing, was not permitted to take a hand. He chose every detail himself, from the cabin-table to the prints on the walls and the very cushions of the deck-chairs. It now pleases him to challenge his guests to discover any respect in which the *Mairi* lacks perfection. The last to be successful was Sir John Simon, who, after a vain effort to provide a wireless set, presented a silver rose-bowl with an elegiac inscription that I have borrowed as a dedication to this book. The *Mairi* is the apple of her owner's eye. If he fell on hard times he would sooner sell his town lease and his country-house, his books, his pictures, and his plate rather than part with her. "The earth belongs to every man; but the sea is free," is his excuse. In the *Mairi* he can travel, carrying his own home with him, into every harbour in Europe. If he were a bachelor he would moor her for six months in the year in the Thames, opposite the Houses of Parliament. At the back of his mind he would like to see her exposed to even greater tests than she has already fulfilled, and, for a wager of £20,000—by no means an unfair actuarial calculation—he is, I believe, prepared to sail her across the Atlantic. In the *Mairi* Lord Birkenhead renews his youth. He has been seen at Cowes so

rejuvenated by the crossing from Southampton as to sweep off his yachting cap in a gesture of extravagant recognition to an unknown and fantastic old lady driving a prehistoric buggy, who, ignorant of his identity, has replied with an equally ceremonious wave of her whip. There were no reporters present.

He was once entertaining Mr Ashmead-Bartlett on the *Mairi* in rough weather. They were playing double-dummy bridge, and a tall French bottle of brandy stood on the swivel table. The owner dealt a hand and looked at his cards. At this moment his guest, with agonised eyes, saw the neck of the bottle come in contact with the ceiling as the vessel gave a lurch. "Four No Trumps!" cried the dealer. This was the last straw, and Mr Ashmead-Bartlett fled to the side of the boat. The hand was never played out.

Lord Birkenhead is a warm-hearted friend. No one has ever known him to forget or fail to requite a friendly act. In the busiest stress of his life he will remember to carry out some service for a friend or dependent. No tale of private woe poured into his reluctant ear goes unrelieved. This trait has endeared him to every person who has come into personal contact with him. He is a hero even to his valet and, what is much more remarkable, to his secretaries and even to his groom.

When he came to London in 1906 he told his groom, Rogers, of his intention. Rogers had then sixteen horses in his charge and a staff of four lads. "I am going to London, Rogers," said Smith; "I shall keep only four or five of my horses and employ only a groom and one lad. Will you come with me, or take another position?" Rogers had a considerable local reputation and could certainly have obtained a better post, but he replied, "I beg your pardon, sir; I'll come with you." He is still with him at Charlton.

Lord Birkenhead is proud of his family. Lady Birkenhead has remarkable strength and sweetness of character. She is perhaps the only person, except her children, who dares to take His Majesty's Secretary of State for India not quite seriously. To hear her assure him that his biting rebuke of some fatuous peer in the House of Lords—which he has just recited to her, striding up and down the room, with his hands in his pockets and the passion of the debate reproduced in his voice and his gestures—reminds her of "naughty schoolboys quarrelling in class" is a hint that politics is not the only thing of importance in the world. Lady Birkenhead's sense of proportion, together with her grace and popularity, have done very much to consolidate her husband's career.

Lord Birkenhead has an especial love of children.

With his own he has always adopted the principle that they may treat him with perfect frankness as a friend and an equal and argue with him, provided they avoid rudeness. They have taken full advantage of this, and it has developed them beyond the sphere of most children. His eldest child, Lady Eleanor Smith, who was born in 1902, is a very skilful journalist. Whether the novel on which she has been for some years engaged will deserve fame, only her publisher, who alone has seen its early drafts, can say. Lord Birkenhead's youngest child, Lady Pamela Smith, born a week or two before the War, exhibits every sign of imminent greatness. If she has a fault at her present age of twelve—and she might not admit this—it is a perhaps too supercilious attitude towards elderly Cabinet Ministers and Indian Maharajahs burdened with nervousness and incredible wealth; she will doubtless, however, in course of time condescend to display her emotions to better advantage. At present, as she confesses, she "likes to be peculiar." Lord Furneaux, his father's only son, has lately been achieving distinction at Eton. As Keeper of the Field, auditor of "Pop," joint editor of the *Eton Chronicle*, and a member of the fives team, he has become, at an unusually early age, one of the most influential boys in the school. A contribution to the Essay Society

has won particular recommendation from the authorities, and—what has afforded perhaps the biggest surprise and the greatest gratification to his father—he has had a sonnet published in a leading monthly review. Without doubt, if his inclinations tend that way, he is certain of a fine legal and political career. He is his father over again, with the additional advantages conferred by the latter's rank and the world in which he moves.

The saddest moment in Lord Birkenhead's life was the death of his brother, Sir Harold Smith, in September 1924, after a long and painful illness. Harold Smith's career has been told with insight and affection in the last pages of Lord Birkenhead's *Contemporary Personalities*. Cotton merchant, estate agent, barrister, politician, recorder of Blackburn, sportsman, actor, and playwright—he was a man who might easily have won high honours had he lived. But he was always the prey of illness, which he disguised so well that political opponents in the War, ignorant of this disability, taunted him with not being in the Army, although he had volunteered several times and did at last secure a commission in the R.N.R. and saw active service. Whenever sympathetic but tactless chairmen at public meetings, "introducing" Lord Birkenhead to the audience (which usually knows him better than them), refer to his late

brother, his eyes fill with tears, and these sometimes cover his cheeks as long as he remembers the reference. He was too, I remember, in tears at the graveside of his friend, Group-Captain Scott, in 1922.

So outstanding an orator must indeed be emotional. He has to project himself into the heart of his audience, and thus instinctively discover the form of persuasive argument that will best win their sympathy and carry conviction to them. He must allow himself to be easily affected by the atmosphere of the occasion. It is no wonder, therefore, that at a public meeting his bearing has something of the actor in it. To see him drive away from a meeting between lines of excited spectators, some cheering and shouting "Good ole F. E.," and the rest booing, and to hear him murmuring "Goo' night" to the one section and "Creep back under your stone!" to the other, is like watching a popular stage favourite leaving the scene of his histrionic triumphs.

He does not pretend to enjoy what bores him. At a banquet he once said, "Though I am a poor man, I would rather pay £50 than sit through any classical concert. It has been said that music is the food of love, but even for that I am too old." He has little interest in the theatre; when he is obliged to go, he chooses a musical comedy of

the lightest kind. I shall quote in the next chapter his view of the films.

He is quick to give pleasure. He met, for example, Mr Will Thorne, the Socialist M.P., at a tube railway-station on the eve of the latter's departure on a patriotic mission to Russia during the War and, Thorne humorously affecting to envy his fur coat, he at once stripped it off and forced the surprised Socialist to take it on his journey. Mr Thorne, and not Lord Birkenhead, be it said, was the man who made this public.

His wit rarely deserts him,[1] and, admirer as I am of his serious eloquence, I cherish a remark he made (and immediately forgot) at a fancy-dress ball a few years ago where he was presenting the prizes. A girl dressed in a composite costume representing a bride and bridegroom was brought to him for a prize. Lord Birkenhead looked at her

[1] I can remember only one occasion when he has allowed himself to be ruffled by other people's reflections. At a dinner when he was Lord Chancellor, an after-dinner speaker of some popularity, the late Mr MacDonald Rendle, in proposing his health, suggested that the House of Lords would be enlivened by the introduction of jazz. "I should like to see the Lord Chancellor," he said, "dancing a fox-trot in those austere surroundings, unless, of course, he preferred a galop." This ill-timed reference to his antecedents in the Irish dispute, then in process of settlement, rattled the Lord Chancellor. He jumped to his feet and, telling the company that the last speaker might have been thought a wit twenty years before, made it plain that he no longer considered him one.

and said with a smile that he did not see how he could better address her than with the stereotyped phrase, "Dear Sir or Madam."

A deputation of Kentish hop-growers once visited Mr Bonar Law and Lord Birkenhead, to urge on them the necessity for Tariff Reform. Its spokesman lamented that there were "'ops, 'ops everywhere, but never an 'op of Kent." "*Inter magnas opes inops*,[1] in fact," quoted Lord Birkenhead pleasantly.

An endless fund of humour—and good-humour at that—is characteristic of him. His character might indeed be summed up in a phrase: he is intensely human and possesses, coupled with this trait, a very powerful constructive brain.

What precisely the future still holds for him is hard to say. Mr Asquith once declared in the presence of Mr Balfour, that Lord Birkenhead had "the best all-round brain in the country." Mr H. G. Wells recently remarked that Lord Birkenhead "is the greatest man in England," a remarkable tribute if only in view of the fact that the author of *An Outline of History* has rarely found himself in agreement with him. And some time ago the late Lord Morley, who cannot be accused of undue prejudice in his favour, predicted the day when "Birkenhead will be Prime Minister in the Lords, with Winston Churchill

[1] "Destitute amid great wealth."

leading in the Commons." No obvious reason presents itself why this suggestion—so doubly ungrateful for the Die-Hards—should not be fulfilled. Lord Curzon's opponents, to further Mr Baldwin's claims to the Premiership, invoked a non-existent tradition that the Prime Minister should not be a member of the House of Lords. It has no place in our history. If, moreover, certain reforms of the House of Lords are adopted, it will be possible for ministers to address both Houses. With this, the last obstacle to Lord Birkenhead's promotion will be removed.

Some think that he may become Viceroy of India. His name was much canvassed when the retirement of Lord Reading became due, but he was never a candidate. He suggested the appointment of the present Viceroy, Lord Irwin, who was chosen despite the highest representations for others. Will it be different next time? The Viceroyalty, it is true, would for a time remove Lord Birkenhead from the Parliamentary arena, but it would hardly prejudice his chances of greater honours at a later date. He has for so long been in the forefront of the battle that a temporary retirement would but make his qualities better appreciated. He would be in the sixties when his term was over, and by becoming in a double sense an "elder statesman," he would lose many of his enemies, who appear to

be under the impression that they are still fighting the same youthful "F. E." whose vitriolic tongue was the scourge of the Radicals before the War and of the Die-Hards immediately after it.

Yet nothing is more unlikely than that he will be Viceroy. He could, it is certain, have taken the post when Mr Lloyd George was Premier, instead of Lord Reading, but he did not desire the honour. Again, when Lord Reading returned, it was his for the asking, but he did not ask. Why should he in years to come accept a post that did not hold sufficient attraction for him in his earlier days?

Whatever the future brings, however, it cannot fail to add proportionate lustre to an already extraordinary record. The man who has succeeded at the first attempt in every task to which he has applied himself, who, conceiving greatly, has fought hard and attained the glittering prizes offered to those who have stout hearts and sharp swords, who has risen from poverty and obscurity to the Woolsack and the Cabinet, who was a portent at the Bar and a phenomenon in politics, who helped to direct the nation through the long years of War and the not less critical period that followed, who cleared the way in Ireland and in conciliating India, who baffled the Socialist hopes at their highest pitch and broke the General Strike, who

has never been more energetic, more balanced, more clear-sighted, and more eloquent than now, will never set aside legitimate ambition and the call to further adventure. I am writing this story of Lord Birkenhead's present career in the certitude that another chapter in his life is opening which will afford even more remarkable material for later biographers.

I have shown that he is destined to be a fixed star in the history of our Empire rather than a transient meteor. Small sections of the public have sometimes misjudged him. They recognise ability and leadership only when these qualities are accompanied by an oppressive consciousness of man's burden and a conviction that it cannot be borne without lugubrious solemnity. They hesitate to place their trust in one in whom conscientious workmanship has not ruled out a joyous acceptance of life, whose greatest successes have been attained with an almost insolent appearance of ease, who "extracts the honey and escapes the sting." They must change, for Lord Birkenhead cannot. He is the eternal boy, and youth will be served.

CHAPTER VII

MR T. P. O'CONNOR and Lord Birkenhead are old friends and political rivals. It is reported that each has written the other's obituary, and that the two manuscripts repose side by side in the stores of the *Daily Telegraph* waiting for the dread day of publication. This lends piquancy to "Tay Pay's" expressed opinion that "F. E." will go down to history primarily for his eloquence.

In the Cabinet he is a silent man. He listens attentively to everything that is said, and intervenes at the right moment with a few sentences, every word of which counts. This helps to explain the influence he wields in its counsels. Despite the hostilities he had to overcome, he became a dominant figure both in the Coalition and in the present Baldwin Cabinet.

In all other places, though Lord Birkenhead's enemies have proclaimed his lack of every personal and political virtue, they have never dared to deny that he is the most eloquent man of his generation. Not that he is without competitors in the art of oratory, for there are many politicians

to-day distinguished by their eloquence. Lord Hugh Cecil, for example, is a very remarkable speaker. On a set subject that accords with his vein no one can surpass him. But when he has spoken he has spoken. He has not the flexibility of mind to be able to return with undiminished fire to the attack and press home his points in spontaneous debate. Mr Lloyd George is a master both of persuasion and of convincing appeal, but not all his speeches will bear technical examination. Mr Winston Churchill, who shares with Demosthenes the credit of having courageously overcome a natural impediment to public speaking, is a brilliant controversialist, bold, dashing, and unexpected. It is no longer true to say of him, as the subject of this volume once did in a House of Commons debate, that "he has devoted the best years of his life to the preparation of his impromptu speeches."

While Mr Churchill is unexcelled in the power of lashing the Parliamentary waves to fury, he lacks the not less valuable gift of calming them. Lord Balfour, subtle and completely master of his words, is deficient in the fire that kindles the torch of immortality. Lord Oxford, the noblest Roman of them all, is a ready and imperturbable fountain of speech. Every sentence flows with unfailing felicity. If only those limpid waters contained more of the salt that makes a great speaker a great orator!

Lord Birkenhead combines to a remarkable degree the rhetorical virtues of these distinguished men, while avoiding their defects. He has Lord Hugh Cecil's grace without his fatigue, Mr Churchill's vehemence and humour without his harshness, Mr Lloyd George's power of conciliation without his hysteria, Lord Balfour's subtlety without his evasiveness, and Lord Oxford's classical polish to which he adds spontaneity and vigour. He can make three or four speeches in an evening to different audiences without any kind of preparation and forethought. Yet each speech will be exactly attuned to its particular subject; each will carry away the listeners on a stream of stimulating eloquence; and each, in a shorthand transcript, will be found perfectly proportioned.

One day, as Lord Chancellor, he attended in the morning various ceremonies in connection with the reopening of the Law Courts. He lunched with the judges and delivered an address on some principles of jurisprudence. He then made another speech on another subject in the same company. A little later he unveiled the bust of Sir Samuel Evans in the large hall of the Law Courts and held a brilliant audience with a long and most moving address on the achievements and character of the late judge. This was followed by an important political speech in the House

of Lords, and, in the evening, by a long speech to a political gathering. Any one of these five speeches would have been enough to fill an ordinary man with pride, but he delivered them, one after the other, without notes and without preparation.

Although he begins to speak without any predetermined plan, a natural orderliness arrays his ideas. His points fall automatically into line; his memory becomes the willing servant of his tongue. A curiously illuminating incident occurred as far back as 1900, when he made a political speech at New Brighton. When he sat down after an hour it was suggested to him that an overflow meeting would like to hear him. He went there, and it was noticed that his second address was almost identical with the first, although this had been impromptu and delivered entirely without notes. He was then only twenty-eight years old.

He has altered but to ripen. He can, in a single speech, pierce the heart of an argument, clarify a complicated issue, rise to sublimity, sink (if this is the right word) to almost brutal contumely, cross swords with a persistent interrupter and drive him from the field into bewildered silence, all with an instinctive feeling for design and for the demands of the occasion. As a Parliamentary debater he has no rival to-day. He has never made

a dull speech on any subject in his life; fatigue leaves him when he begins to speak. Newspaper reporters, cynics by profession, are roused from their gloom when he appears, and their reports are invariably punctuated with such appetising parentheses as "Cheers" and "Laughter." He is never prolix. M. Clemenceau remarked of him at the Peace Conference, "I see that in England you pay your lawyers not according to the length but according to the quality of their speeches."

No one, as Michael Collins was surprised to discover, can be more conciliatory. No one certainly can be more deliberately offensive. The House of Lords, that austere assembly, did not know whether to laugh or weep when, in one debate, he called Lord Haldane "a blackleg in the legal profession"; told Lord Arnold, another Socialist peer of Liberal antecedents, that he found "his air of arrogant superiority intolerably offensive," and, the subject under discussion being economic, inquired, "what evidence the noble lord had given that he would ever be able to make ten dollars in Wall Street"; and when, on another occasion, he called those respectable Die-Hards, Lord Selborne and Lord Londonderry, the "Dolly Sisters," and, in reference to Lord Shandon's ill-conceived scheme for an Irish super-Senate, said that "a man might as well purchase a mule with

the object of founding a stud." He turned once on Lord Danesfort, a Die-Hard peer who had intervened in an Irish debate after the signing of the Treaty. "I have listened to many foolish speeches in this House," he said. "I have made some myself, but never in all the years during which I have been a member of this House have I listened to a speech so foolish. Let me test his observations and make an examination as to whom the noble Lord stands for. Does he represent Sir James Craig [the Ulster Premier]? Sir James Craig has gone home to Northern Ireland expressing thanksgiving for this settlement. He has gone home and is received with acclamation by his Parliament and by every public body in the North of Ireland. . . . The noble Lord was good enough to say that he was deeply concerned on behalf of the Irish Free State. Let the noble Lord wait until the Irish Free State invite him to become their mouthpiece in this House, before he comments in this way upon a statement which I made on the word of a high financial authority from the Free State itself. . . . Whom does the noble Lord represent? I have come to the conclusion that he represents only himself, and I do not think much of his constituency."

Less elevated audiences are not so easily shocked. They are happy when, as at Southamp-

ton in the 1924 election, Lord Birkenhead turns on a heckler who has threatened him with the barricades, and cries, "I'm not afraid of your barricades! We've beaten you with brains, and, if if it comes to fighting, two can play at that game. Put up your barricades—and we'll slit your soft, white throats for you!" Ex-Lord Chancellors do not, as a rule, express themselves so forcibly; but Demosthenes and Cicero, who were accustomed in moments of stress to abuse the personal habits and maternal antecedents of their adversaries, would have approved. "To chain the multitude, you must wear the same fetters."

It pleases public audiences, too, to see hecklers caught in baited traps. When Mr Ure (now Lord Strathclyde), the Liberal Lord Advocate of Scotland, was the hero of his party's supporters before the War, Smith secured a hearing at a hostile meeting in Sheffield by mentioning Mr Ure's name, which was greeted with cheers by the gallery, and continuing pleasantly, "I see here some of my friends, some kind simple friends, who rejoice at the name of Mr Ure"—(Yells of "So we do!" "Good old Ure!").—"Quite so. Perhaps my friends will applaud Mr Ure's recent allegations against the Duke of Buccleuch"—("Yes, yes!").—"Then I hope they will also take this opportunity of joining in his retraction and in his apology."

He frequently adopted a similar method in the House of Commons, and, thanks to a well-simulated air of seriousness, never failed to ensnare his rash adversaries.

Hecklers never worry him, for he is in his element in dealing with them. Nervous chairmen have been known to rise and appeal, with suppliant gestures, for fair play for his speech, only to find themselves waved down with the muttered aside, "I don't want 'fair play.' You let *me* deal with them."

I propose in this final chapter to give a few examples of his eloquence. There is an embarrassment of choice, and several of his best-known speeches—his "glorious, splendid, rapturous speeches," as the late George Wyndham once called them—have been quoted in earlier chapters. It would be easy to select a dozen passages—purple passages—but to do so would not properly display the amazing scope of his rhetoric. The quotations that follow are chosen, therefore, with an eye rather to variety of subject and style than to the compilation of an anthology for the elocution classes of academies for young ladies and gentlemen. They may nevertheless serve to demonstrate a standard of eloquence which no other British orator of the last hundred years can surpass.

HOME RULE

I am cautious in anticipation. I am not rash enough to make a flippant prediction in relation to the future. But I do not, and I will not, wholly dismiss the dream that, instructed by the new orientation of this new world, we may succeed where the dynamic personality of O'Connell, the burning eloquence of Gladstone, and the iron will of Parnell were broken and splintered in failure. If this should happen, how immense our contribution to the stability and greatness of these dominions! Should we in our day be so happy, history will record of our generation that we inherited indeed a mighty Empire, but that in our day it was menaced abroad by a powerful and most resolute enemy, while at home it was enfeebled by a plague-spot of disaffection and sedition. And in such an event the annals of that history will record on a shining page that we—our generation—after five years of martial vicissitude, broke in rout the foreign enemy and, having done so, here at our doors re-conquered in a nobler conquest this island of incomparable beauty, and, in doing so, became reconciled to a people so individual in its genius, so tenacious in love and hate, so captivating in its nobler moods.

(*House of Lords, November* 23, 1920.)

AMERICAN AIMS

I have no delusions as to the only function which the American Government are called upon to discharge. Their primary, and indeed their only duty, is to the American people. If by intervention in the affairs of a stricken Europe they can advance the fortunes of the American people, then it seems to me, as a humble observer, that it would be their duty to make such an intervention. But

if in cool perspective they reached the conclusion that no compensating gain to the American people would result from reassuming European and world responsibility, they would be failing in their duty if they embraced an unnecessary responsibility.

(*Institute of Politics, Williamstown, Massachusetts, August* 24, 1923.)

AMERICA AND THE LEAGUE OF NATIONS

The American people is the most generous people in the world in the field of international charity. The United States have lavished countless millions of dollars upon the starving population of Russia. They were first in the field with bountiful relief to stricken Japan. But they draw—and rightly draw—a sharp and logical distinction between Idealism in their capacity as private citizens for private charities, and Idealism in their corporate or national character. And accordingly they exercised their undoubted right in repudiating at the first opportunity an idealist conception which they believed to be at once impracticable, strange to their traditions, and incompatible with their interests.

(*Glasgow, November* 7, 1923.)

THE FALLEN MEMBERS OF GRAY'S INN

They are not with us. They gave their brilliant youth to the country of which they were ornaments. The depth of our pride in them cannot be expressed in terms of rhetoric. Their names will live for ever in the history of this House, and as compared with them and what they did, or with the priceless unforgettable example which they have set, legal luminaries, believe me, are transient and undistinguished phantoms. Mr Senior, the names of those

members of this Society, the unconscripted members of Gray's Inn, men who in the supreme moment—for so I believe historians will pronounce it—the supreme moment of the fortunes of the British Empire, rushed to arms to defy and defeat a menace and challenge by the side of which the challenge of Philip of Spain, of Louis XIV, and even of the great Napoleon were negligible—I say the names of those young men shall never be forgotten. In this House we can give them a special sanctuary, and we shall do it for all time, in our hearts.

(*Gray's Inn, May* 9, 1919.)

THE WAR IN THE AIR

What does it mean, the war in the air? It is very easy for us in the luxury and security of this Hall to assume the performances of our airmen, but I wonder if it is possible in imagination for those of us who have not been called upon to take part to conceive the efforts, the sacrifice, and the gallantry of those young heroes—all boys—who go from the public schools to set a seal on the valour of this nation the like of which has never been known. We talk of the valour of the Homeric heroes, but the only clouds in which they fought were provided by the goddesses for their protection. The valour of the heroes of Homer, made musical by the praise of poets, has been far, far surpassed by that of our own airmen. Let there be no delusion. Never have the stamina and fibre of the human race been tried as it has been tried in the exertions which day by day the boys of the Air Services are making. Many of them had been living lives of luxury, and now these boys from Harrow, Eton, and Oxford, and the grammar schools of the Empire, every day take their lives in their hands, and they do it for us.

(*Gray's Inn, December* 14, 1917.)

"JUDAS"

I have been called "Judas." Nothing is affronted by that epithet except the sense of history. The charge which history has preferred against Judas is that he abandoned his Leader. The charge which is apparently preferred against me is that I have refused to abandon mine.

(*Hotel Victoria, October* 23, 1922.)

OVERTHROW OF THE COALITION

Never since the proverbial frog swelled itself up like a bull until it burst has any man stood in such physical danger as Sir George Younger. Mr Chamberlain and I are not the type of men who betray their leader. I am an Englishman and I cannot do that sort of thing.

(*Birmingham, November* 12, 1922.)

JOURNALISM

Think of the privileges of journalism! How much more advantageous it is to be a journalist than to be a politician! If you are a statesman you are expected, even in this indulgent age, to say the same things, shall we say, for at least eight weeks at a time. But if you are a newspaper man no one ever expects you to say the same thing for two days together. It really is, I conceive, the most admirable situation which an imperfect world affords to a perfect man.

(*Manchester, December* 16, 1923.)

INDIA

While we survey the strange history which has associated two peoples so different in origin, in civilisation, and in religion, we are conscious of many errors of judgment, and

even of some occasional wrong; we are, nevertheless, bold enough to claim that in fair perspective we have not been the unworthy trustees of the charge which we undertook so many generations ago. We have brought to this gigantic task an unstinted devotion. Many a nameless hero has spent his strength and flung away his life in grappling with the hideous spectres of famine and disease. Many an illustrious Viceroy, as the stately pages of Lord Curzon's book remind us, has mortgaged too deeply in the same task his vital resources. . . .

It is our purpose resolutely, tirelessly, and wholeheartedly to labour for the well-being of India as our ancestors have laboured throughout the generations. For that purpose we desire and we request goodwill; nor shall we be niggardly bargainers if we meet with the generous friendship which is near and dear to our hearts. We no longer talk of holding the gorgeous East in fee;[1] we invite, in a contrary sense, the diverse peoples of this continent to march side by side with us in a fruitful and harmonious partnership which may recreate the greatest and the proudest days of Indian history.

(*House of Lords, July* 7, 1925.)

VICEROYS

The relation of a Secretary of State for India to Viceroys is of a man who spends no inconsiderable period of his life in a waiting-room at Victoria Station, with words of hypocritical regret when they leave and the language of hysterical recognition when they arrive. The great Duke of Wellington was once asked to accept the dedication of a book. He replied, in language giving a polite refusal, that when he

[1] *Punch* remarked, apropos of this speech, that we "now hold it in F. E."

had been Chancellor at Oxford University he had been much exposed to authors, and he had therefore made a salutary rule that never again would he accept a dedication. In my humble way I have been exposed to Viceroys.

(*March* 28, 1926.)

MARRIAGE AND DIVORCE

I am concerned to make this point, by which I will stand or fall, that the spiritual and moral sides of marriage are incomparably more important than the physical side. . . . It seems to me that there can be no doubt which is the higher and more important side of marriage. If you think of all that marriage represents to most of us—the memories of the world's adventure faced together in youth so heedlessly and yet so confidently, the tender comradeship, the sweet association of parenthood—how much more these count than the bond which Nature in its ingenious telepathy has contrived to secure and render agreeable the perpetuation of the species! . . . Those who take and those who attempt to advocate the other view [and oppose reform of the divorce laws] do not live in this world—their arguments are the whisperings of the abandoned superstitions of the Middle Ages.

(*House of Lords, March* 24, 1920.)

SIR WALTER SCOTT

Scott is not only a Scottish hero. He is a great Briton. In a crisis, not only in the fortunes of Scotland, but of the Empire, there was none more eloquent, more inspiring, in his presentation of the national case against the tyranny of the Napoleonic system than Walter Scott, and the reverberations and the persuasiveness of his message were

not confined to Scotland. I do not know of the career of one man of letters more consistent, simpler, nobler, braver than the career of Scott. . . .

I am sufficiently a believer in the teaching of Scott to believe that neither now nor hereafter is this world to be an easy world to live in. I have never been able to persuade myself that the arms of the strong will not be required in the years that lie in front of us. Let us by all means devote every power and every influence that we possess to the effort to avoid war, but do not let us be so blind to the teachings of history as to believe that great possessions will be permitted in the future of the world to soft peoples. They never have been; they never will be.

(*Edinburgh, December* 5, 1924.)

OSCAR WILDE

We have heard much in this case of the vices of Oscar Wilde. We have heard little of the sufferings with which he paid for those vices—the long-drawn months of his imprisonment, and the squalid agony of his lonely death. It would be wrong if, twenty years after, no word were spoken of him in this case save in revilement. That unhappy child of genius is not least unhappy in this, that at a moment when his lustre as an artist, surviving death and conquering shame, had purged—as it seemed for ever—his earthly transgression, this hideous story should have sprung into cruel resurrection.

(*Law Courts, April* 1913.)

FILMS

On the few occasions when I am decoyed by my family from occupations which I consider more amusing, it is musical comedy that I usually favour. . . . I should be

very sorry if anyone here were to imagine that I am entitled to discuss the development or prospects of the cinema. My own tastes are of the simplest. I do not like films which for three hours introduce me to various sentimental passages in the lives of people who at the outset fail to interest me. What I do like is somebody dropping, in order to escape justice, from the top of a tree on to an express train. I like to see the fugitive thereupon pursued by several motor-cars. If I cannot see that, I like above all to see Italian officers going down very steep hills on their horses. Otherwise I take very little interest in films. When the heroine proceeds for two and a half hours to make devastating love to the hero, I think that the trade is wasting both its opportunities and its resources. . . . The cinema preaches to people in the moments when they seek their recreation. It exercises a wholesome influence that is beyond the reach of any statesman. Its part is not less important than that which the tragedians and comedians of Athens played in that small State so many years ago.

(*Hotel Cecil, March* 7, 1922.)

STAGE AND BAR

There is perhaps a good deal which the legal profession and the theatrical profession have in common. I might point out how greatly you lack in sincerity and what we lack in art. In the main—I do not say it is always the result you achieve—it is your object to give pleasure. I have never heard it said by the greatest admirer of my own profession that it was our principal object to give pleasure. Indeed, dabbling as we do rather in the pathology of human nature than in its other aspects, it might even be said by an adverse critic that our object, or the result of our activities, was to give pain. It might be said that, while you give

pleasure in order to make money, we give pain in order to make money. After all, perhaps, neither of us is philanthropic, except incidentally and naturally.

(*December* 10, 1911.)

A PORTRAIT

Sir Edward Marshall-Hall introduced me to an artist who undertook to paint my portrait for 500 guineas. After many sittings a portrait was painted which no human witness has ever identified except the artist. It has been sent three times to Christie's. First it was described as "An Italian Musician," and the highest bid was £9. Next it was sent as "A Mediæval Poisoner," and £14 was the highest bid.

Finally, it was sent under the description, "A Nonconformist Preacher." A bid for £7 was hurriedly accepted, but when the attempt was made to identify the bidder it was found that he had disappeared.

(*Royal Institute of Painters in Water Colours*, *March* 18, 1924.)

TEMPERANCE

Let me further recommend to hon. gentlemen opposite that they should extend to the judgment of their neighbours' affairs the same standard of conduct which they apply to their own. I have exchanged many cheerful glasses with hon. gentlemen on the other side who are now wearing an unnaturally austere expression, and I would suggest to them that it is unwise for any great party to yield to the temptation of trying to effect moral reforms at the pecuniary charges of other people. I appeal to the House to resist the temptation of laying up for themselves treasure in Heaven by the

inexpensive method of confiscating other people's treasure on earth.

(*House of Commons, April* 26, 1907.)

THE WILL OF THE PEOPLE

The truth is that hon. gentlemen opposite do not desire to abolish the House of Lords when it opposes the people—which would be easy. They desire to abolish the people of England when they oppose the Liberal party—an undertaking under democratic conditions of far greater difficulty.

(*House of Commons, June* 26, 1907.)

The hon. and learned member recommended the [Licensing] Bill to the House because it is not the Bill of an Oriental despot, but a Bill introduced with the will and consent of the people of England. . . . We have now a provision in the Bill which is designed to deal with the case of elections, and it is curious to note how it is found necessary to place restrictions on the very people who are said to desire this measure. The view is carried so far that, while the rulers of this country, the electors under a democratic system, pass to the booths with majestic tread to record their votes on the tremendous issues of peace or war, or to pronounce upon the economic mysteries of free trade or protection, they are to be muzzled by their admirers opposite, lest they make drunken beasts of themselves on the way. That is the position in which we are left in the case of a Bill, which hon. gentlemen opposite say the people really want. *Vox populi, vox Dei*—but the voice speaks with a hiccough, unless the right hon. gentleman, the member for Spen Valley [Sir Thomas Whittaker] takes appropriate precautions.

(*House of Commons, November* 20, 1908.)

A CHANGE OF VIEW

I find it difficult to believe that the Under-Secretary of State for the Colonies [Mr Winston Churchill] has so much leisure that it is his habit to put forward in the Press "smooth proposals" which he is not prepared or wishful to see carried into law. It is sufficient to point out that the method to which he gave his name when he wrote that article is not the method on behalf of which he spoke last night. The right hon. gentleman, in another place, has observed that there are more ways of killing cats than by choking them with cream. It may, perhaps, be added that there are more ways of addling a political egg than by giving it to an Under-Secretary to sit upon.

(*House of Commons, June* 26, 1907.)

LIBERAL PEERS

As far as the rank and file of the Government are concerned, the position they have occupied on the House of Lords question does them, from one point of view, very great credit. Very many of them have indulged in violent denunciation of the House of Lords. The task must have been distasteful to a degree, for the present House of Lords is largely the creation of the Liberal party. We find that, if you take the creations from the year 1830, the Liberal party created no fewer than 249 peers. This then, it may be said, is a parricidal war. Since the days of King Lear none has ever nursed such an adder in his bosom. And while the Liberal party created 249 peers, we on this side of the House have created only 181 peers. During the first year in which the present Government held office they created 16 new peers—that is to say, a peer every

three weeks. I can see the mouths of hon. gentlemen watering.

(*House of Commons, February* 22, 1909.)

OLD-AGE PENSIONS

The death duties are being levied to pay for old-age pensions. It seems to me a curious thing that one section of the community should live to enjoy five shillings a week while the other section should have to die to pay them. . . .

The Old-Age Pension Act provides five shillings a week for a single person and seven shillings and sixpence for a married couple. Note the piety of our Government! They give you seven shillings and sixpence a week for living with your wife and ten shillings for living with somebody else's.

RUSSIA AND THE MINERS' STRIKE

Mr Cook, the miners' secretary, who once, I believe, described himself as a humble disciple of Lenin, has recently thanked God for Russia, and has explained that £400,000 has been received from their comrades in the Russian mines to support the dependents of their English colleagues in a moment of adversity.

This announcement, I confess, has revived, if it ever flagged, my admiration for our common human nature. It is indeed a touching reflection that miners in Russia are prepared to work ten hours a day in order that their British colleagues may not have to work eight; that they are prepared to subscribe no small proportion of their wages of 25s. a week in order that their English colleagues may not receive a less sum than 40s. or 50s. a week. If anyone ever despaired of human nature he will undoubtedly find here an opportunity for hope and encouragement.

(*Savoy Hotel, June* 9, 1926.)

IDEALISM IN INTERNATIONAL POLITICS

(*This speech, with its reference to the "glittering prizes" offered "to those who have stout hearts and sharp swords," has been misrepresented by ignorant and sometimes malicious commentators. Without attempting to reproduce any but the salient parts of the speech, which was Lord Birkenhead's Rectorial Address to the students of Glasgow University, I think that these quotations may serve to disclose the main lines of the speaker's argument.*)

Idealism may be defined, as well as in another way, by calling it the spirit which impels an individual, or group of individuals, to a loftier standard of conduct than that which ordinarily prevails around him or them. . . . Idealism in the international field is the spirit which would carry into the relations of States the kind of ethical progress generally indicated above. . . . In current language, an idealist is one who places before himself in private or public affairs as attainable a goal which other citizens, perhaps equally moral, do not believe to be so attainable. . . .

The school of Idealism is the very antithesis of the school of self-interest. And yet nothing is more apparent than that, politically, economically, and philosophically, the motive of self-interest not only is, but must be and ought to be, the mainspring of human conduct. Bentham long since pointed out in his *Theory of Legislation* how inconvenient and even mischievous the consequences would be if every individual were to regulate his conduct, not in relation to his own interests, which he is likely to understand, but in relation to the interests of others, in relation to which he is very likely to be imperfectly informed. . . . The only legitimate sphere, therefore, of the idealist within the field of private morality is to elevate, if he can, the standards to which conduct is, in the existing scheme of things,

adjusted, without attempting to impair motives which are fundamental in human nature and vital to social economy.

Divide the history of the world into two broad epochs, with the birth of Jesus Christ as the dividing line. An examination in terms, however general, of these two periods equips a scientific observer with some material for the formation of a true decision. Of the earlier period first: I do not pause here to deal with the countless minor struggles which everywhere marked the infancy of the world. I mention only to note it, the evidence collected by Darwin and his followers showing at work in every department of life the survival of the fittest. But I must bestow a moment upon the lessons, if indeed in this connection they are lessons, to be derived from the Old Testament. According to Holy Writ, the chosen people were set in motion in order that they might forcibly possess themselves of a land flowing with milk and honey. . . . A similar but more extended observation falls to be made about all the great Eastern empires of the ancient world. Egyptians, Medes, Persians, Assyrians—all these achieved Empire at the point of the sword. Of how many dead Empires does the silent and immobile East contain the record? In what graves reposed the millions of their unprotesting slain? A happier and humaner experience might have been looked for from that exquisite intellectual efflorescence which we associate with the greatest of the Greek States. Yet historically their records tell of almost continuous strife. So bitterly indeed and amid such jealousies did they wage war with one another that they could not combine even against the fierce Macedonians, and so one more rare and beautiful civilisation perished utterly from the earth. To Greece succeeded Rome, teaching the entire world through the whole of its stern, dominating, and imperial sway that might was right

and that a sharp sword in the hands of a disciplined soldier was the most persuasive argument in world diplomacy.

And there came, too, the message of Jesus Christ, tender in its simplicity, superhuman in its humanity. . . Mighty Powers and great Princes have rendered homage to the message of mercy and peace which came from those divine and persuasive lips. And yet, while we take note of the spread of the Christian religion, we must none the less ask what has been its reaction upon international conduct? What was its influence over the recent world convulsion? . . .

Summing up this branch of the matter, we are bound to conclude that from the very dawn of the world man has been a combative animal. To begin, he fought violently for his own elemental needs; later, perhaps, in tribal or communal quarrel; later still, with the growth of greater communities, upon a larger and more sophisticated scale. And it is to be specially noticed that there have nevertheless almost always existed men who sincerely, but very foolishly believed, firstly, that no war would arise in their own day, and, secondly (when that war did arise), that for some reason or other it would be the last. At this point the idealist degenerates into the pacifist; and it is at this point consequently that he becomes a danger to the community of which he is a citizen. Athens, in her decline, had no lack of such advisers, and, unhappily for the City of the Violet Crown, she preferred their sloppy folly to the ardent eloquence of Demosthenes. In the days of Napoleon—who had a very just contempt for these idealogues—Charles Fox harnessed his eloquence to the chariot of sentimentalism. But he switched rather abruptly as soon as he became Prime Minister. . . . And in our own day we have been afforded convincing evidence of the real peril to national security which arises when idealists secure control over a powerful political party. . . .

Still a further illustration may be drawn from recent events. The signing of the Armistice immediately released all the sentimentalists. Not only was the Great War ended, but there was never to be another. The League of Nations was to be equipped with functions and resources which would in effect enthrone it in super-sovereignty over the contributory nations. But herein the statesman, who of all others should most completely have understood the American people, demonstrated that in fact he understood them least. . . .

We are told that the object to be aimed at is the abolition of war. Everybody recognises that war is both cruel and hateful. But is it even conceivable that it can ever be abolished? Is the ownership of the world to be stereotyped by perpetual tenure in the hands of those who possess its different territories to-day? If it is, very strange and undesirable consequences will one day follow. For nations wax and wane, so that a power competent in one age to govern an empire, however remote, in the general interest of the world, will in another abuse a dominion for which it no longer possesses the necessary degree of vigour. . . .

It may, perhaps, be charged against those who sincerely hold the views which I have attempted to make plain that we carry in our veins the virus which coloured the sombre and unmoral genius of Treitschke, and which found popular expression in the mosquito propaganda of Von Bernhardi. But such a charge, if made, would be patently unjust. We neither hold nor have we preached these doctrines. We diagnose certain diseases. We did not create them. A distinction must surely be drawn between him who calls attention to the risk of conflagration and that other who puts his torch to inflammable material.

The purport and the moral of these general observations may be summarised in a few concluding observations. For

as long a time as the records of history have been preserved mankind has passed through a ceaseless process of evolution. This process has been sometimes pacific, but very often it has resulted from warlike disturbances. The strength of different nations, measured in terms of arms, varies from century to century. The world continues to offer glittering prizes to those who have stout hearts and sharp swords. It is therefore extremely improbable that the experience of future ages will differ in any material respect from that which has happened since the twilight of the human race. It is for us, therefore, who in our history have proved ourselves a martial rather than a military people, to abstain, as has been our habit, from provocation; but to maintain in our own hand the adequate means for our own protection, and, so equipped, to march with heads erect and bright eyes along the road of our Imperial destiny.

(*Glasgow, November* 7, 1923.)

YOUTH AND THE FUTURE

My advice to you is to meet success, when it comes to you, like a gentleman, and to meet disaster like a man. As you force your way in the hard struggle which the War has left with Englishmen and Englishwomen, you will never know the pleasant, easy life we knew in this country before the War, when there were hardly any taxes and we spent half our time in complaining of the few there were, and when we had none of the misfortunes through which the ship of state must be steered to-day.

You can never know life or the world as it was before the War. This is a hard truth, but one which should be learned by the younger among you, that you and I, and our children after us, will live a severely competitive life in a hard competitive world.

It is all to the good what we are beginning to realise that we are living in a country which in the future will not be a country either comfortable or self-supporting for idlers. It will be a country in which workers may find it difficult to obtain even a means of subsistence. Therefore, while you are young, cultivate the habit of industry. I regret that I never did so, so I can speak with knowledge and experience of the value it would have been to me had I cultivated the habit when I was your age.

Side by side with industry you must cultivate the care of your bodies and attention to those games which will keep your bodies young and fit as you grow older. You will find that you are able to work better just in proportion as you will play better among your contemporaries and those among whom your lives will be spent.

(*Birkenhead School, July* 26, 1926.)

INDEX

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