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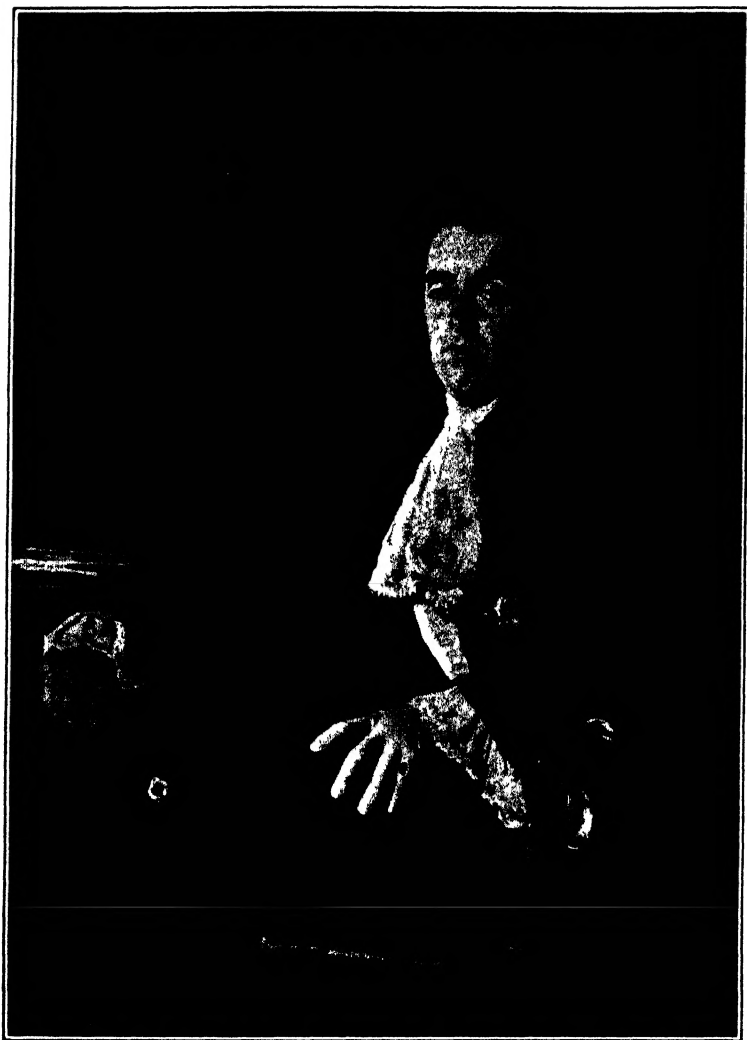
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HIS SON

FOREWORD BY

The Rt. Hon. D. LLOYD GEORGE, O.M.

APPRECIATION BY

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BIRKENHEAD.



## FOREWORD

THE British public were not privileged to know the real F. E. They knew and admired the dashing swordsman redoubtable in every combat, forensic or political, the brilliant orator who had a ready and unrivalled command of all the arts of the great speaker whether in the Senate, in the Courts, or on a public platform. They laughed at his inimitable witticisms and repeated them from mouth to mouth. They liked the reckless and occasionally insolent invective with which he assailed the things or men he disliked; but they never saw or understood the close student of his tasks, whose mastery astonished the experts, the reticent and wise counsellor whose advice was sought and respected by statesmen, the loyal and kindly friend who won the affection of all those who had the good fortune to know him well. The latter, when I meet them today, hold his memory in a regard which impels them to talk of him always with a warmth and depth of feeling which few elicit in life and still fewer retain in death.

During my Premiership, I naturally saw a great deal of him, sometimes on subjects appertaining to his high office, often in the Cabinet and in the many consultations which took place between the leading Ministers of the Crown on matters of exceptional moment.

He was a great Lord Chancellor. In this respect he surprised the staid and solid who think that a sense of humour and alertness of mind are incompatible with soundness of judgment. One of the ablest of our judges came to me a considerable time after the elevation of Lord Birkenhead to the Woolsack and said: "I want to apologise to you about F. E. When you made him Lord Chancellor, I thought it a lamentable mistake. I have discovered since that the mistake was mine. I have sat with him in the Lords on many cases and talked to my colleagues about him. I consider him to be the greatest Chancellor of our generation."



In the Cabinet he was reserved and generally silent. He was very reluctant to express an opinion on subjects outside his official sphere. He never tendered any advice on matters of which he had not made a special study. When there was a topic which was perplexing the Cabinet and causing us some difficulty in arriving at a decision, unless he had given some previous thought to the subject Lord Birkenhead held back his opinions until he had heard the discussion fully. In council he was cautious as well as sagacious. That is not the front he presented outside to the public. When he had to expound a proposition to his colleagues he was remarkable for his lucidity and brevity. He was a master of words. That is why he never overcrowded them. He chose the best and most fitting. I recall an occasion at the Peace Conference of 1919 when a question suddenly arose which involved issues of international law and it was decided to call in the Allied jurists. The Lord Chancellor happened to be in Paris and I sent for him to advise and to present the views of the British Delegation. When he arrived, M. Clemenceau as President of the Conference submitted to him the issue upon which his opinion was sought. Without a moment's hesitation Lord Birkenhead gave an exposition of his views. The statement lasted ten minutes. It was a model of clarity and compression. At the end of it you felt there was nothing more to be said. M. Clemenceau turned to me and said: "How wonderfully clear." I asked him to let us hear what the French jurist—a lawyer of great distinction—had to say. M. Clemenceau replied: "It is quite unnecessary. The Lord Chancellor's statement has settled the question."

There may be some of his old political associates who deplore the great share he had in negotiating and carrying through the Irish Treaty. But surely there cannot be one amongst them who will not recognise and respect the courage he displayed in taking his decision and the dauntlessness with which, having taken it, he stood by his action. It would have been much easier for him to have taken the other course, for he was more deeply committed to it by his past than most of his colleagues. He laid himself open to charges of inconsistency and even of betrayal from friends who declined to recognise that changed conditions demanded a change of policy. No one knew better than he did what might and would be said. He did not decide

in a hurry. He gave prolonged and intense thought to the problem from every point of view. He did not overlook his own personal difficulties in supporting a concession which in some directions went further than that he had once denounced as treason. But he felt that he had fully safeguarded the liberties of Ulster for which he had stood and for which he had been prepared to fight. For the rest, he was prepared, in order to bring an ancient feud to an end, to agree to a compact between the parties which necessarily involved sacrifice on both sides. He was assailed publicly and even more privately, with a bitterness which has few parallels in the history of political controversy. But nothing dismayed his courage once it was aroused and he rode down all opposition with an intrepidity that knew no fear. The more dangerous appeared the resistance, the higher rose his courage and the firmer his resolve to overcome all obstacles. I never admired this valiant fighter more than I did in this the most perplexing time in his life when he faced his friends and risked the whole of his career in support of a policy which he was genuinely convinced was the right one to pursue in the interests of the Empire.

Judged by the essentials of manhood, intellect, courage, kindness, loyalty, Lord Birkenhead was a great man. It is one of the tragedies of public life that the country he loved never got the best and highest of which he was capable, for he was cut off when he had only reached an age when most statesmen attain the height of their opportunity.

D. LLOYD GEORGE.

*September 8th, 1934.*



*THE PRESS BUREAU (1914)*

**I**N August, 1914, England, so long divided about the German menace, awoke abruptly out of her reverie. The imminence and magnitude of her danger, as yet not fully understood, shattered every party barrier, and dispelled every sectarian bitterness. No large pacifist minority impeded her preparations. The war against the First Republic was embarrassed by the purest patriots in England; our struggle against the revolted colonies in America released the destructive eloquence of Chatham, and the Crimean War stirred the hostility of Bright. All party controversies were laid aside in the face of this present menace.

This union of the parties was made clear at a great meeting on September 14, 1914, at the London Opera House, in Kingsway, where Mr. Churchill, Mr. Will Crooks and F. E. Smith spoke from the same platform, at the joint invitation of the Constitutional and National Liberal Clubs. It was a striking example of the national acceptance of the doctrine of the united Front. The Opera House was filled with an audience of ten thousand people, and outside there were two overflow meetings in the streets. The Band of the Coldstream Guards played in turn the National Anthems of Belgium, Serbia, Russia, Japan and France. The great audience, led by Lord Lincolnshire, their chairman, stood motionless in their places. Mr. Churchill's resolution was that

“This meeting of the citizens of London, profoundly believing that we are fighting in a just cause, for the vindication of the rights of small states, and the public law of Europe, pledges itself unswervingly to support the Prime Minister's appeal to the nation, and all measures necessary for the prosecution of the war to a victorious conclusion, whereby alone the lasting peace of Europe can be assured.”

Mr. Churchill's speech roused the audience to loud and ex-

cited cheers. F. E. Smith followed; he had never spoken to better effect. He spoke of our pledge to Belgium, and said that the word of England was the bond of England—that with all the honour and all the responsibility of a great nation we had certified to that small State that, while our strength could save them from it, their neutrality should never be violated, that never should they be exposed to the ravages of war. The end of his speech strongly moved the audience. He said :

“ This war is going to end either when we break this barbarous system, or when this barbarous system breaks us. (Cheers.) There is no other end; it is a fight to a finish. (Cheers.) The terms of peace will be arranged either in London or in Berlin. We think, on the whole, that it might be Berlin, and we are encouraged by the extraordinary spontaneity with which the whole Empire is springing to arms. Who is not filled with emotion when he reads of the exertions that are being made to-day in Canada, Australia, India (loud cheers), New Zealand, South Africa, everywhere? There has never been anything like it in the history of the world. No European power has ever been able to understand the principles on which we have conceded self-government to these great daughter nations.

“ The nation approaches this, the greatest crisis in her history since Napoleon fell, in no boastful spirit, but in a spirit of calmness and resolution. It is hopeful that, if God so wills, these ancient realms, purged of unworthiness and disciplined by warlike vicissitudes, may yet see order wrested from chaos, may extort, even from the existing welter of bloodshed, the hope of a permanent peace, and might, in the end, convince the world that a proud nation might passionately love peace, and yet be fit for war. (Cheers.) The sword will never be laid aside by this country—in all our long history it never has been—until we have won a lasting and an honourable peace.”

Meanwhile Smith had spent six strenuous weeks in the most difficult and thankless task of organising a Press Bureau. As soon as British intervention in the war became certain and the Army was mobilised, Smith, as a lieutenant in the Queen's Own Oxfordshire Hussars, had reported for duty at the regimental headquarters at Oxford. But the authorities had other and far more important work for him to do, and he never saw service with his own regiment.

On the night of Sunday, August 2, 1914, the Admiralty and

War Office assumed control of the cables and, in accordance with the regulations that came into force when war was threatened, imposed a naval and military censorship on all messages. It was a simple matter to stop outgoing telegrams that might give news to a potential enemy, as it was to forbid the Press to print naval and military intelligence. But the Government quickly realised, as it had not done before, that the British public, accustomed for generations to a plentiful supply of news in its free Press, would not tolerate the sudden cessation of all news about the most important and critical events in living memory. The War Office policy was merely negative; the Press and the public demanded something positive in the shape of all news that could be published without harm to the interests of the nation. It became obvious to the leaders of all parties that an intelligent Press censorship must be set up at once. F. E. Smith discussed the question with Mr. Churchill, and offered to give any help that he could, subject, of course, to the approval of the military authorities under whose orders he was now placed. Mr. Churchill passed on the suggestion at once to the permanent Secretary at the Admiralty, Mr. Graham Greene, who lost no time in communicating with Smith.

On August 5 F. E. Smith was suddenly summoned by Lord Kitchener and Mr. Churchill. Lord Kitchener was the head of the War Office, Mr. Churchill of the Admiralty. They invited him to undertake the task of establishing a Press Bureau. It was the first time that such an organisation had been promoted in England. F. E. Smith was unversed in the technique of journalism; he was ordered to found the system of newspaper censorship which continued until long after the Armistice was signed. It was a thankless, onerous, and difficult task, in which it was impossible to avoid abuse on one side or the other. There was no model of war-time censorship in existence on which he could base his own creation. Accustomed to the freemasonry in the Law Courts, and the party liaisons in the House of Commons, he was now brought into co-operation with a new and difficult type of subordinate, editors and reporters accustomed to freedom in their work, fretting under the sudden bearing-rein of emergency censorship.

F. E. Smith occupied his new position until the end of September, 1914. He became at once the obvious target of a cluster of malicious mosquito bites in the Press, comments which reappeared veiled in spiteful but cautious anonymity, when he left for France.

England had never before been engaged in a war in which censorship had played an important part. She had never envisaged a régime in which the famous freedom of her Press would find itself suddenly disciplined, and in which the outgoing cables from the shores of England would be stopped and censored. Both these conditions became necessary when war broke out. Under the changed conditions of modern warfare it is of vital importance for a nation to shroud reports of its own domestic concerns under a centralised censorship. The Press could not be too closely controlled: the enemy sought to procure English newspapers at every possible opportunity. As late as the autumn of 1915 the Germans were all too well informed upon many miscellaneous topics relating to our internal condition, our organisation, and our preparations.

Also, as F. E. Smith said:

“In modern warfare the combatants no longer consist of selected forces numerically insignificant in proportion to the whole mass of the population. When whole peoples fight, the area upon which intelligence departments must operate is nothing less than the psychology of nations, and every revelation that increases enemy knowledge is *prima facie* to be discouraged.”

England was therefore compelled to subordinate every consideration—from those which were comparatively trivial, such as the curiosity of her public and the poignant anxieties of wives and parents awaiting news of great actions, to those which were of consequence, such as the liberty of the Press—to the demands of military necessity. She was accompanied in this new departure by every other nation, Japan, Russia, France, Germany, Austria and Italy, who were compelled, when war came, to impose stifling measures of restriction upon the Press of their various countries.

The question of the interruption of cables seemed to some, at the time, to be both oppressive and unnecessary. This was not so. In the United States, for example, there were,

at the outbreak of war, many warm friends of this country. There were also many implacable enemies, who by descent and by the affiliations of their upbringing loathed and desired to injure her. The cable censors in London were active: they were often unjust and wrong; they were responsible for disastrous errors, but they intercepted and thwarted many schemes which were directed against this country, and brought to punishment German spies in England who were in communication with their sympathisers in the United States. Intercepted cables also revealed arrangements to carry contraband to Germany by the device of interposing a neutral port between the English point of departure and the German destination.

Many mistakes were made in those two first feverish months, but the task of the organisers was far greater than the puerile criticisms which pursued them would suggest. They were given a few days in which to improvise their machinery, their staff, their system, and there was no guiding post to direct them.

The need for providing the Press with news that could safely be published had not been properly considered and the question had to be faced while angry editors and Dominion, American and foreign journalists fumed because the greatest "story" in the history of journalism could not instantly be told in every detail. A clear head and a complete indifference to attacks were required for the Directorship of the Press Bureau, which was soon to be subjected to a violent cross-fire from the naval and military authorities who thought that it let out too much news, and from the Press and public who shrilly complained that it gave too little.

F. E. Smith foresaw this enfilade, but decided to accept the responsibility. The War Office formally ordered him to the Press Bureau instead of joining his regiment. It was regarded as a good sign of the new unity of the parties that a leading member of the Opposition Front Bench should volunteer for such a thankless and delicate task under the Government.

The constitution of the Press Bureau was announced by Mr. Churchill in the House of Commons on August 7. Mr. F. E. Smith would, he said, preside over a committee that would supply correct information in regard to naval and military operations. It would forbid publication of news that might



assist the enemy. Six naval and six military officers were appointed to advise him, with Professor (afterwards Sir Charles) Oman and Sir George (afterwards Lord) Riddell as lay experts, and with Mr. Harold Smith, M.P., as secretary. Temporary premises were found in the old Admiralty buildings at Charing Cross, and the Bureau was opened on Monday, August 10.

The new censorship naturally excited annoyance and criticism, but it must be said that with the loyal co-operation of the Press it rendered incalculable service in these first critical weeks. If the Allies were in ignorance and doubt when the German armies were making their amazing flank march through Belgium towards Paris, the enemy were no less confused, for, thanks to the Press Bureau, no word of the despatch of the British Expeditionary Force across the Channel reached the Germans until the four divisions had safely landed and were well on their way to Mons. This achievement alone, as the Home Secretary, Sir John Simon, told the House of Commons in the following December, sufficiently justified the existence of the new department.

During the first weeks the Press Bureau was embarrassed by the lack of a policy, and by what, in this country, was the innovation of a censorship in news. The Admiralty and the War Office would have liked to say nothing whatever about their activities, and quite failed to realise the value of publicity as a moral spur in the successful prosecution of a great war. F. E. Smith found it harder to persuade the naval and military authorities to supply a modest amount of information than to induce the editors of newspapers and the American correspondents to refrain from publishing "scare stories" even if, as they often claimed, such matter had been printed in the continental Press. In suppressing news he had the authority of regulations made under the Defence of the Realm Act, which made the unauthorised publication of naval and military news an offence against military law, so that the publisher could be sent before a Court Martial. Such regulations certainly commanded respect, but they were too crude to last, and they were modified a year later, when Press offences were brought under the ordinary law. F. E. Smith's tact and persuasive powers enabled him to dispense with the dubious weapons of D.O.R.A.

When it became a question of supplying news, he found the naval and military chiefs very hard to convince. From August 11 the Press Bureau began to issue daily statements, including items of news from all over the world. It did not guarantee the truth of all these items, and it was abused for giving "an unconfirmed report" that the chief Liège forts were holding out. In the existing lack of news, however, of any kind from Belgium these experimental bulletins were very precious.

On the night of August 17 F. E. Smith was able to tell the waiting reporters that the British Expeditionary Force had been safely transported to France, and added Lord Kitchener's thanks to the Press for its loyalty in withholding all reference to the movements of the first four divisions, whatever might have been said about them in the continental newspapers. On August 20 the Bureau published the first of the apparently unending lists of casualties which were to appear daily for the next four and a half years. Three days later, General French's little force came into contact with the powerful army of General Kluck along the canal near Mons. The position of the Bureau became at once most delicate. The newspapers had learned from the French Press and from the arrogant German bulletins in the papers of neutral countries that there had been heavy fighting, and the relations of the wounded and missing began to receive private intimations of their losses. The Bureau absolutely forbade any reference to Mons or to the Battle of Le Cateau which followed it on August 26. It is easy at this distance to understand how vitally important was this enforced silence to the success of the long retreat from Mons. If the German G.H.Q. had had any idea of French's difficulties in keeping in touch with the retreating armies of the Allies and in reaching a line on which he could pause in safety to re-organise his shattered force, General Kluck's task on the right flank would have been greatly simplified. At the moment this sudden silence as to the fate of our army was violently attacked in England. The French admitted that they had been forced to retire in haste; the German bulletins said that "the British army beaten before Maubeuge has been forced to retire south; it is completely surrounded", and added that "the news of the capture of the British force would be received with greater

exultation in Berlin than even the news of the fall of Paris ”.

Such statements in contrast with the Press Bureau's laconic announcement of the fall of Namur on August 24, which was correct, although some of the outlying forts did not surrender till next day, naturally caused great anxiety, and there arose a loud and angry demand for news from the War Office. It required a very patient and strong man to direct the Press Bureau in those days. The complaints against the "Suppress Bureau" were not unjustified in so far that it was an improvised body staffed by inexperienced people. At first, too, it had no contact with the cable service which was censored by the Admiralty and War Office. Not till September were the cable censors organised as part of the Bureau.

There was probably some unequal treatment of rival papers, and the Admiralty for many reasons was drastic in its treatment of detailed stories of naval actions which occasionally appeared in newspaper offices. A climax was reached when on Sunday, August 30, *The Times* published a special edition containing a long and gloomy account of the bedraggled state of the British Expeditionary Force. "This is a pitiful story I have to write," it began. "Would to God I had not to write it, but the time for secrecy is past." The message went on to say that our small British force, overwhelmed by superior numbers, had been "scattered all over the country". The Press Bureau, while excising names of regiments and places, had mistakenly permitted the publication of this story, but restored public confidence by issuing later on the same day a full statement of the position which showed clearly that French's two corps had "extricated themselves in good order though with serious losses", and having been reinforced were ready to fight again.

The Bureau also explained that it was not thought necessary to forbid the publication of messages which did not give military information, but this implied refusal to stop false or inaccurate news was fiercely challenged, both then and later. On the whole the Bureau gained in prestige from this Sunday's agitations. The public in general shared the view expressed at the time by the *Pall Mall Gazette*, that the episode had "supplied the finest vindication of the work of the Press Bureau,

that its existence was necessary, and that its delay in the issue of news until the events could be got into the right perspective was justifiable and wise”.

The next fortnight saw the bloody battle of the Marne, with its swaying fortunes and sudden reversals. No one but the commanders-in-chief on the opposing sides, and they only imperfectly, could tell from day to day how that great battle was developing, and the reserve maintained by the Press Bureau was fully justified.

Early on September 10, General French's first despatch on the retreat from Mons was published; but not until September 17 did the Commander-in-Chief's second despatch throw authentic light on the Marne and indicate the beginning of the battle of the Aisne.

On September 9 Mr. McKenna, the Home Secretary, had accepted Parliamentary responsibility for the Press Bureau. Its headquarters were transferred to the United Service Institution, and the cable censors were transferred to that building from the Central Telegraph Office, so that all Press censorship was now conducted in one place.

Mr. McKenna and F. E. Smith had defended the Bureau in a long debate in the House of Commons on September 10 and stressed the supreme importance of withholding news, however apparently trivial, that might assist the enemy. After this, the Bureau, now fully organised, was able to continue its task without much criticism. F. E. Smith felt that he had set the machinery in smooth motion and he wished to join his regiment at the Front and escape from the storm of violent and often ignorant criticism under which he had suffered at the Bureau. He resigned on September 26. Sir Stanley (afterwards Lord) Buckmaster succeeded him. And he left for France a few days later to take up a post on the Staff.

On September 23 he had spoken at Liverpool, again with Mr. Winston Churchill. A great deal of attention was excited by this remarkable gathering. F. E. Smith, T. P. O'Connor, and Mr. Winston Churchill were the speakers: all these men had refused to let party differences prevent them standing on the same platform as their former political opponents. F. E. Smith raised loud cheers when he said: "When the cry was raised in the House, 'God save Ireland!' Mr. Redmond shouted,

‘God save England!’ It will take a great deal to make some of us forget that.”

He sent a letter of farewell to his constituents through Dr. Richardson :

DEAR MR. RICHARDSON,—

As you know, I am offered the opportunity of going to the Front, and I shall have left England by the time that you receive this letter. I cannot go without conveying through you to all my constituents, irrespective of party, the Good-bye which circumstances have made it impossible for me to bid them in person.

No member of Parliament was ever treated with greater kindness or indulgence than I have been by the electors of Walton, and I beg of you to bid all my friends in Walton an affectionate farewell until, as I hope, we meet in happier days, when the quarrel has been carried to the only issue which the honour and safety of Great Britain can recognise.

Yours very sincerely,

F. E. SMITH.

The Prime Minister wrote to compliment him on his work at the Press Bureau :

10 DOWNING ST., WHITEHALL.

21st Sept. 1914.

MY DEAR F. E. SMITH,—

I learn with great regret, so far as the Press Bureau is concerned, that you feel yourself under a more binding obligation to go to the Front, and there to undertake duties of the most responsible character in connection with the staff of our Indian troops.

I wish, as head of the Government, to put on record our warm sense of appreciation and gratitude for the splendid service which you have most unselfishly rendered under thankless conditions to the forces of the Crown, to the public, and to the State. You have set an example which I trust and believe will in their several degrees be widely followed by all sorts and conditions of loyal and public spirited men.

Believe me to be always,

Yours very sincerely,

H. H. ASQUITH.

The Rt. Hon. F. E. Smith, K.C., M.P.

Probably the ex-Director, who had had more adverse criticism from the Press in a short time than almost any other man ever had, was agreeably surprised to receive from the Council of the Newspaper Proprietors' Association a resolution "placing upon record their appreciation of the courtesy displayed towards the Press by Mr. F. E. Smith when acting as Director of the 'Press Bureau'".

## II

### AT THE FRONT (1914-15)

**F**. E. SMITH, Lieutenant in the Queen's Own Oxfordshire Hussars, left for France at the end of September, 1914. He was promoted temporary captain in his regiment on November 15 and held the temporary rank of major with the Staff. He was attached as Intelligence and Recording Officer to the Indian Corps, which began to arrive at Marseilles at this time. He was both at the time and afterwards attacked in a certain section of the Press on the ground that he had avoided active service with his regiment, the Oxford Hussars, at the outbreak of the war. He had received so many pinpricks in public life that he was able to disregard the spiteful innuendoes which were made in September, 1914. When he had returned to England in the spring of 1915 to engage in official work, the accusation was most unworthily revived in a letter printed in the correspondence column of the *Morning Post*, which bluntly accused F. E. Smith of having shirked his military duty at the outbreak of war. The accuser, it may be added, had not the courage to put his signature to the letter.

Smith saw that he must take steps to protect himself, and wrote to his commanding officer, Colonel Dugdale :

32 GROSVENOR GARDENS, S.W.

November 13th, 1915.

MY DEAR COLONEL,—

I enclose you marked copy of an anonymous letter which has been published by the *Morning Post*. It can have no meaning except that I avoided service with the Regiment at the outbreak of war. The circumstances are known only to you and me, and I should be glad if, as my commanding officer, you would put on record your views on the question whether I fell short in any particular of the duty which every loyal officer owes to his regiment, and in a much wider sense to his uniform.

FREDERICK SMITH.

A week later Colonel Dugdale answered from France :

OXFORD HUSSARS,  
FRANCE.

MY DEAR F. E.,—

I am sorry not to have written before, but I have been busy. I have read the letter in the *Morning Post* which you sent me, and I agree that the writer evidently meant to suggest that you had in some way avoided serving with the Regiment in France.

I should myself think that you could treat such a suggestion with contempt. But I clearly remember the facts, and if it is any satisfaction to you in the present uncertainty of life to have them on record, I gladly recall them. You mobilised with the Regiment at the outbreak of war. When you reported yourself at Headquarters at Oxford you found a telegram from the War Office ordering you to report yourself there for Press censorship work. You showed me the telegram and asked my advice. I told you to go, for at that time no one had any reason to suppose we should leave England before any other Yeomanry Regiment, and I thought it ridiculous that a man of your age and ability should wait as a subaltern perhaps for months on the East Coast or elsewhere.

Some weeks afterwards the question arose—and I think was referred to in the Press—of our Brigade volunteering for foreign service, and I remember you wiring to the adjutant telling him you wished to volunteer for foreign service. I did not take you because I had by this time the full strength of subalterns, and indeed a little more, and they, of course, had by this time the advantage of some weeks' continuous training, which you had not. We left England very suddenly, and the next thing I can remember is that you got leave from the War Office, and made a journey to France when you were offered a position on the Indian Corps Staff, and asked whether I had any objection to your accepting it. I was delighted you were coming to France, too, and I remember saying that it was ultra-correct of you asking my leave as I had not taken you with the Regiment.

We didn't go into the trenches for a long time, but were kept first at Dunkerque and then at General Headquarters. I remember when first we were ordered into the trenches in the bad time last November, you wrote saying we were sure to



have casualties and that you would immediately rejoin on getting a telegram; and a few days later you came over and told me the same thing (though it was quite unnecessary, for I knew it) at an interview. We were very lucky, and only lost one officer at that time, but I should have sent for you at once if we had been unlucky.

I really think that is all I can say about it. Everything you did was done with my full knowledge and approval, and I really cannot see why outsiders should interfere between the Commanding Officer of a Regiment and his officers. I suppose there is some politics in it, and I don't pretend to understand them.

When are you coming over to see us again? There is not much doing and the weather is vile. Winston was whisked away from me the moment he arrived.

Yours ever,

ARTHUR DUGDALE, Comdg. Q.O. Oxford Hussars.

This correspondence, including the letter from the only man in England who knew the facts of the case, dispels any doubts that may remain.

Nor were criticisms on F. E. Smith's new appointment wanting. The following paragraph appeared in the *World* on October 5, 1914:

"Mr. F. E. Smith, M.P., is, I understand, not going into the fighting line as a combatant, but is at the Front as the official correspondent of the Indian newspapers. Journalists should protest against the way in which these functions have been usurped by men having no knowledge whatever of writing for the papers. There is no working or well-known journalist on the now huge staff of the Press Bureau, and Mr. Smith has been appointed to turn out articles for the entire Indian Press. It is a common fallacy that any man can be a journalist. Fleet Street is littered with the relics of the victims of this delusion."

It is worth while observing that F. E. Smith was, in later years, without apparent effort, to become one of the most highly paid and eagerly sought after journalists in England.

Going out to France meant considerable sacrifices for F. E. Smith. When he left for France, he had already been paid in advance over £6,000 on briefs. He instructed his wife to write

cheques for this sum, as the briefs had to be returned. In addition, he had to forgo between £6,000 and £7,000, representing other accepted briefs. The Lord Chancellor suggested that all K.C.'s who received briefs returned by barristers going to France should keep only half the amount and return the balance to those who were leaving. F. E. Smith only received back £300 of this money. Meanwhile he had already spent the greater part of the £6,000. He had been living at a large house in Grosvenor Gardens which he was at the time unable to leave, and his wife found it necessary to live there on a maior's pay and to cut down her staff to a minimum. Her old nurse at once came forward and offered her the small accumulated savings of a life-time to help her through this difficult period, and was much distressed when the offer was refused.

The absence on active service of counsel or of witnesses in legal cases led to many applications being made in the High Court for the postponement of trials. Mr. Duke, K.C., was explaining to Mr. Justice Darling why an action could not now be heard on the day originally fixed, and said: "My friend, who was Mr. F. E. Smith, K.C., and is now Major F. E. Smith, was briefed in this case."

Mr. Justice Darling: "I should think he's General F. E. Smith by this time."

F. E. Smith served with the Indian Corps as a G.S.O.2 from October, 1914, until the late spring of 1915, when he became a member of the Coalition Government. Lieut.-Colonel Merewether was then appointed by the War Office to succeed him. F. E. Smith and Colonel Merewether both had access to regimental records, and were on confidential terms with the General Officer Commanding the Indian Corps, Sir James Willcocks. He and Smith were indeed to become close friends. Smith and Colonel Merewether co-operated in their account of the fortunes of the Indian Corps, which was published at the request of the India Office in 1918.

F. E. Smith could never forget the tragedy of the Indian Army Corps which as surely as the Expeditionary Force, and with as terrible a toll of life, saved the British Empire by blocking the first terrific German assault in the late autumn of 1914. He remembered how in that year the great transports had entered the harbour of Marseilles; the disembarkation with

the young British officers, some not more than boys, flushed with the excitement of the new adventure, leaning over the bulwarks, and laughing and asking if they had come in time. In six months nearly all of them were dead. Some had fallen in the bitter fighting at Givenchy, some at Neuve Chapelle and in the desperate assaults at Loos.

The Indians landed in France at a moment when the resilience of the British Army, ground down by heavier forces and superior artillery, had almost collapsed. The Indian Corps were at that moment the only regular troops mobilised and available in the Empire. The Territorial Army and the Kitchener Army had not emerged from training. Perhaps more was demanded of the Indian Corps than of any other troops in the war. The circumstances of their use were terrible and pathetic. So in a sense were the troops themselves. They were brought from their sunny homes in India; they took ship and sailed across a strange ocean which many of them imagined to be peopled with malignant gods. Inured to the Indian sunshine and the arid hills and plains, they shivered in the Flanders rain and the mud and filth of those early trenches. They were wanting in the revengeful fury of those who were to see their country desolated by artillery, their cathedrals razed to the ground, and their civilians shot. They were animated by no threat of danger to their own homes or families, fired by no instinct of common patriotism. Many of them were, indeed, ignorant of whom they were to fight; some thought it was the Russians. Without the slightest experience of modern warfare they were projected suddenly into the ghastly slaughter of Ypres.

The doubts of F. E. Smith's capacity for his new post that were expressed by a few journalists at home were not shared by Sir James Willcocks, the General in command of the Indian Corps. He wrote:

"We had been joined at Marseilles by Major F. E. Smith as Recording Officer, and I knew at once that in him we had a man who would keep India well informed of the doings of her soldiers, but although he wrote many most interesting reports, little of what he related was ever allowed to appear, except in the baldest form. It was undoubtedly this quite unnecessary amount of censorship that long kept India in the dark and most adversely affected recruiting.

"F. E., as he was alone known, was an extraordinarily attractive personage; he could say in one pithy sentence what others would take pages to describe; and it was perhaps this very gift which secured him some enemies. But big men generally find enemies in plenty, and F. E. could afford to smile at those he encountered in France. 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 ranks.

"On one occasion when accompanying me round the trenches he was standing just behind me in the ruined tower of a sugar factory overlooking the Germans, when a bullet struck the beam to which he was holding within an ace of his head; it was very near its mark and somehow I felt it was meant for F. E. personally.

"Another time he was on horseback watching German prisoners being conducted to the rear by Indian soldiers when a prisoner ran out of the crowd and caught him by the leg, crying out 'Save me, save me!' It turned out that F. E. had once defended him in some law case and he hoped now he might save him again.

"I was very sorry when he left the Corps, as he was always a cheery companion and an optimistic coadjutant. Once when I was visiting a battalion in its rest billets after a hard fight in which it had lost heavily, the Indian officers and men came running up to me and cheering. F. E., who was with me, was quite affected and I felt a lump in my own throat, and tried to say something; but he put me at my ease in a moment by remarking quietly: 'No need to say a word, General.' He is very human."

There was an immediate sympathy between the two men. As a rule, the soldiers in France detested Smith, and he despised them. With Willcocks it was quite different. The moment F. E. Smith had joined the Indians, Willcocks had put himself out to be friendly. Smith warmed towards him and grew to feel the greatest affection and admiration for his commanding officer. They understood one another perfectly. Willcocks was not only a first-class soldier and a gentleman but a man of broad mind and knowledge of the world. Instead of dismissing the new arrival as a "bloody politician", he prepared to understand and enjoy a new mind. Each appreciated the other's qualities. Willcocks was a being apart from the bigoted soldiers, some of whom were leading divisions in the first year of the war. When F. E. Smith was made a knight in 1915, Willcocks was one of the first to congratulate him in a charming and friendly letter. F. E. Smith had, very characteristically, written to Willcocks

suggesting that his services deserved a greater reward than they had received, and saying that he only awaited Willcocks' permission to interest himself in the matter. Willcocks wrote :

“As regards me, don't trouble yourself. My duty is to do whatever falls to my lot as long as this war lasts. Time enough to look to one's personal matters when Germany has been made to feel the draught. If I am considered worth anything, I shall no doubt get my deserts. If not, well and good. It is good of you having me in mind, and I will remember what you say, but I have never asked those high in office to help me, and I have made my own way.

“As for you, F. E., I am glad and proud to have made a friend of you. From the first day I met you in Marseilles I thought you and I would get on well together, for we have one thing in common at least, and that is the saving grace of common sense and human nature. I knew there were some, who, in a narrow-minded way, looked on you as the civilian soldier, but the moment I knew it I was drawn closer, for I felt I needed a man of sterling common sense who would trample on red tape and interests in war time, and *you* were the man. I assure you I shall always retain a very happy recollection of our acquaintance.

“In August (on any day) if you come to pay us a visit you will be most welcome, and, F. E., you will, of course, come as my guest. In the years to come also a room is always reserved for you in my new house which is now my very own—in Essex.

“Yours ever,

“JAMES WILLCOCKS.”

F. E. Smith met his old friend, Jack Seely, at the Front. After the declaration of hostilities he had said to Seely : “All other problems vanish before the Prussian menace. The great issue now to be fought out is between Prussia and England.” The two friends had dined together the night before General Seely left England in the early days of August 1914. Smith had told Seely of his decision to do his best to bring all the public opinion he could influence to the support of the war policy, and, as soon as that was done, to take any job, however humble, in the actual theatre of war, where he could be of most use.

General Seely had seen him twice before he came out to the Flanders front. First, in a destroyer at Calais where he had



CHARLTON, BANBURY



come on very secret business, just after the battle of the Marne. Seely had been sent there to meet him and others by Sir John French, on whose staff he was serving. Later they met in a small cruiser off Dunkirk at the time of the diversions made by the Royal Marines and the Royal Naval Reserve at Antwerp. General Seely had been in intimate touch with the Belgian, French and English front line troops for more than two months. It was his duty to go from one to the other and report to Sir John French; to this duty was now added that of visiting the Indian front.

And so it came about that General Seely often came from the French front to the south where de Castelnau, d'Urbal, and other French generals would arrange for him to walk along their front line trenches, in order that he might report to Sir John French on the new methods they were evolving for the strange new siege warfare. Seely walked round the Indian trenches with F. E. Smith. Willcocks had praised Smith to him, and had spoken of the immediate insight which he had acquired into the minds of the Indians. "This strange man", said Seely, "with his sombre, mysterious eyes, saw right through into the hearts of these people. His industrious brain had acquired, in those few weeks, a mass of knowledge about the ambitions, prejudices and anxieties of these Indians, suddenly transported from the sunshine of India to the miserable mud and gloom of the trenches of Northern France."

There came a day when it was believed at General Headquarters that a German attack was impending on the Indian Corps front. General Seely was sent with a message to General Willcocks, and instructions to consult with him and then to go along the front line. He delivered the message, had a conference with Willcocks and went on towards the front line. F. E. came with him in his motor-car. Seely had already told F. E. that he could not accompany him to the front line, because he could take no one with him except the Intelligence Officer who was attached to his staff. F. E. replied that he could help Seely by lending him a horse, as it was much safer to ride than to walk because the distance could be covered in much shorter time. They agreed on this point; then F. E. said: "Now there is one thing I must tell you; my headquarters are now with a gallant old curé who refuses to leave



his rectory, or whatever they call it in this country, in spite of the shells falling all round, and he has provided me with a comfortable bedroom, and an outhouse where I can keep my horses. But the real point is this; I want you to take what I say very seriously: he has with him his great-niece, a French girl of such surprising beauty that he hardly dares to let anyone see her. Now will you please promise that if she should appear you will pay no attention to her? I have promised the curé that I will not allow her to speak to any soldier." "I am not much of a lady's man," said Seely, "but I could not but be thrilled at the prospect of seeing this beautiful child so near the front line."

By the time they arrived at the little house it was dark, and all windows were shuttered to exclude the light on the east side. They stopped the motor-car and as they approached the door they saw a light shining through the chinks. F. E. turned to Seely and said: "I ask you to pledge your word on your honour that you will not cast a glance on this beautiful child who has come to share the horrors of war with her devoted grand-uncle." Seely replied: "Oh yes, of course, I promise; but open the door quick." They walked in and were greeted by the curé. He told Seely that the horses were ready, and said kind things, wishing him well, and assuring him that the "Bon Dieu" would protect him. General Seely said that he must be getting on his way, but the curé insisted that he had coffee before he started. "I am afraid that I have nothing else. Madeleine will bring it at once." The old man got up to go to the kitchen. F. E. grasped Seely's arm and said: "You must avert your eyes!" Seely heard a clatter of cups, and there waddled into the room a toothless old lady of 93! The curé had been let into the secret, and burst into laughter while Seely kissed the old dame, to her infinite surprise. It was characteristic of F. E. Smith that all the time that he was arranging this simple comedy, his alert mind was planning how Seely could carry out his mission with the least possible delay and in the most efficient manner.

They drank their coffee and in a moment were out again in the street where three good horses were waiting, F. E.'s three best hunters that he had brought out to this strange place; and in inky darkness, illuminated only by a few star shells, they

cantered along the *pavé* road towards the front line, 2,000 yards away. General Seely told Smith that he should not have come, but Smith replied that the horses were his, and that he must decide. It took them five minutes to come within 600 yards of the front line; then came a burst of rifle fire, and they galloped on; when they had gone 200 yards farther there was the more sinister sound of machine-gun fire from at least two guns. They heard the bullets striking the *pavé*, and then, all at once, F. E.'s horse came down with a crash. F. E. was unhurt, jumped up and said to the orderly: "Give me your horse and lead mine, if he gets up, while we go on." They rode on to the Battalion Headquarters that they sought. As they approached, they got behind a little bank where they were in complete security. F. E. Smith stopped and said to Seely: "Look here, Jack, I have got no illusions about this adventure. I have not been here as long as you, but I have been here long enough to know that one's chance of survival walking the whole length of the front line, even if the impending attack does not come off while we are there, is far less than usual; so I wrote down this morning when I knew you were coming some messages which you can take back, if you survive and I do not."

He quickly handed General Seely a few closely written words on a sheet from a field note-book, and Seely put them in his pocket. When they got to the Headquarters of the Infantry Battalion, and General Seely had been introduced to the Colonel, he had a glance by the light of a single candle at the messages which F. E. Smith had given him. "They were touching, simple messages to his wife and each of his children; nothing dramatic or flamboyant, but just words of love and deep affection." Then they went on to the front line. It was raining heavily, and the mud was deep. Enemy machine-guns and rifle fire were incessant. It was impossible to dig deep enough to secure protection owing to the inflow of water, so it had been necessary to build parapets to keep off the bullets. There had not been time to build them thick enough, so that the bullets penetrated them, and during the hour they spent in the front line many were killed or wounded. General Seely watched with great interest the strange sight of these Indians, all of the fighting races, engaging in a warfare so alien to anything which they had ever conceived.

He watched the dark brown skin of their faces, and then, when a flare went up, the shining eyes looking out into the darkness. F. E. Smith moved amongst them unperturbed by the whine of bullets. He knew all the British officers and said a kindly word to each. He also spoke to the Indian officers and men and a few simple phrases of their language which he had learned. "It was clear to me", said General Seely, "that he was not only a historian, but an inspiration of courage and resolution. They were valiant men, these Indians; I knew the climate would beat them, as I then recorded, and as indeed happened. But they played an essential part in holding a sector of our thin line in those desperate days.

F. E. Smith's duty was to act as eye-witness to the Indian corps, and to prepare descriptive accounts of the fighting which could be published in the Press—especially in the Indian Press. The first of these, dated November 5, described the skill and courage of the Gurkhas in the trench warfare. He told a story of a German spy who, dressed in a Gurkha uniform, ordered an officer to evacuate part of a trench, so as to make room for reinforcements. There was something peculiar about the Gurkha's accent which made the officer suspicious, and he asked him sharply the name of the transport that he had come in. The spy hesitated, and was instantly shot. In a second article dated November 20, he described amusingly how an Indian private caught in no-man's-land persuaded the Germans that he hated the British and that if he were allowed to go back he would return with twenty-five friends who wanted to desert. A cynical newspaper which had evidently suffered under the Press Bureau observed: "F. E. can evidently patch up columns with the same facility that he can cut them down." It was curious that F. E. Smith's reports were now subject to the Press Bureau over which he had himself presided.

Through the hard winter, the most severe of the war, he was billeted at Hinges, a village a mile or two north of Bethune. The curé, with whom he lodged, grew very fond of him, and corresponded with him years after, telling him, for instance, in the early summer of 1918, how the whole village had been destroyed by the German bombardment in their Flanders attack. F. E. was touched by his destitution, and after the Armistice collected, from the officers who had been billeted on the curé,

enough money for him to live on for the rest of his life. Smith visited the curé more than once after the war and carried on a correspondence with him till his death, frequently sending him money.

A few of F. E.'s letters from the Front, all but one addressed to his wife, have been preserved, and the salient portions are here set out in order. The severe comments on Sir John French, as he was then, are noteworthy and, of course, confirm the adverse views expressed in other quarters.

1914. At Marseilles (undated—October 4). (He had gone to join the Indian Division, who landed there between September 26 and October 14.)

"We had an amusing journey down. Ah! an English General! How young! I gravely saluting in a manner soldierly yet not too forbidding."

At Marseilles (October 7).

"I am much better to-day, the third day after inoculation, but it has been such a bore. To-day it seems clear Russia has done very well, though in the West the official news is not altogether reassuring."

At Paris (October 11).

"We are now on our way to the front with despatches from our General to French, having motored all the way from Marseilles to Paris in three days. After delivering our messages we shall go to Orleans for the final concentration of our force before it leaves for the front. In about ten days we should be there.

"Paris is awful—far darker than London. All lights out and restaurants closed at 9.0 o'clock—a great gravity everywhere. We watched a German Taube today preparing to drop and then dropping bombs on Paris: they dropped in the region of Montmartre—poor pleasure-seekers!—but did very little damage."

France (October 15).

"Here we are (at an advance depot). I am not allowed to say where but not in any danger, for at least a week, probably two. We motored from Paris today. It is becoming very cold even here and I should think it will develop into a Crimean winter before the thing is over.

"I was disappointed about Antwerp, though it is more the moral effect than anything, except that it releases a considerable German army, I suppose about 120,000 men, against us. My dear, the spirit

of the French people is wonderful. We have been north and south and no one talks even of anything but victory. They faced with complete composure the prospect that Paris might be taken. It simply made no difference at all, and it means so much to them. Paris is like a city of the dead.

"I have been very gay and happy until I got your two letters on my return to the depot here. They made me sad, throwing over me here the atmosphere of home and your affection and the recollection of the darling little children. One's psychology is so odd. There is the constant society of brave and attractive men, and one thinks only of the campaign and its prospects—but there comes a reminder like your letter of all the sweetness of great domestic happiness and one becomes in a flash absurdly effeminate."

France (October 16).

"We are still here. Do not talk of the war getting on your nerves. Think of these poor French women with every son they have fighting in the trenches and still keeping up their courage. Rather regard the war as a perpetual subject of interest and look forward to the day when every brave Englishman and Englishwoman will say that they kept their nerve and played their part in the great crisis in the history of England."

France (October 21).

"It is very boring here, but we move on in a few days. Would you send me my waterproof that Marshall Hall gave me? It rains every day and it would be most useful. Also, my angel, do send me from the Stores every 20 (or perhaps 18) days a box of my cigars. I can live, as I am doing, on bully beef. I can drink, as I am doing, cocoa and tea. But I cannot, and I will not, as long as my bank will honour my cheques, wash them down, so to speak, with nothing but a pipe. I can smoke two pipes a day and not more, which leaves me with a necessity for five cigars, or say seven (two for a friend) and honestly the support of my system requires this. This is most important and quite serious. Tell the Stores not to print any indication that the boxes are cigars. Have printed yourself some gummed labels as follows :

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and put these and nothing else on the outside. These precautions are very necessary, as cigars are always stolen by the men if they escape the officers."

France (October 23).

"The General is most amiable and I give him a cigar whenever I see him. He is inordinately fond of a good cigar.

"We shall arrive at cover side on the 28th, a very few days earlier than I thought. The fighting on the left wing, as you say, is desperate and it is a thousand pities that we could not arrive a week earlier. The Highlanders, Sikhs and Gurkhas with us are superb troops, and I think that they would just have made the difference. I never saw finer men."

(The Lahore division began to go into the line before La Bassée on October 23.)

— (November 1).

"We have moved our H.Q. from Merville to Hinges near Bethune. I am very well and fit. Things here, although the line is being maintained, are not as good as the English papers make out. The Germans attacked everywhere last night in great strength, and, although in the main the positions were sustained, we have no reserves of men. All this talk about the men coming singing out of the trenches is damned nonsense—they come out dead to the world and some of them gibbering idiots.

"All day and all night the artillery rumbles. I asked Ward (F. E.'s valet) when we first heard it if he had done so. He replied: 'Yes, sir, I trust it did no damage!' As each Black Maria makes a hole big enough to swallow a large motor-car, I told him it was probable they had. Oh! My dear! The sadness of the desolation! And the sufferings of the refugees: it is beyond tears. Everything in the world gone."

Hinges, near Bethune (November 2).

"My dear, all these things in the papers about the Indian troops are lies. They are not doing very well (rather the contrary) and we are very anxious about them. This, of course, is most deeply secret. Our line, about 13 miles, is held by Indians alone without any reserve (none can be spared) and we are told on the Staff to have our motors or horses prepared in case the line is broken. Ward is paralysed by hearing from Rogers (F. E.'s groom) that the grooms are to relieve one another all night long, one being always ready to saddle the horses; but I have no fear because I am sure the main fight tonight will be at Ypres, 15 miles away, where with the French we are making a very strong counter-attack which may (how I hope so!) reproduce the victory of the Marne. The artillery is sounding even here while

I write, and we are just going out at 11.0 o'clock at night to observe (at a safe distance in a motor) the fortune and development of what may possibly be the decisive moment of the greatest battle in the greatest war human beings have ever waged.

"You cannot imagine how horrible war is—how vile and foul! One must laugh and joke always, or else one would always weep. Today we motored through a village half destroyed by shells. The Church and Hotel de Ville were in ruins. The streets were littered with the corpses of horses and Hindoos. Yet forty people with the liveliest excitement helped us to rescue a drowning puppy which could not get out of the canal. 'Ah! Le pauvre petit chien,' and so forth.

"I keep very well and fit and I am still an optimist about the war, though I think that it is a long way to Berlin."

Hinges (November 2).

"We are here still and shall be until either we drive the Germans back or they drive us back. The most desperate struggle of the whole war has been going on along the line all last night and all today. The artillery fire never ceases for an instant, day or night. The Emperor has come today within 12 miles of where I write, which he always does when he thinks that he is going to pull something off. We knew he was coming through spies, and tried to bomb his headquarters all the way down. Both sides of the line are honey-combed with spies. A girl was found today with clippers in her hand cutting our field wire in a village where I was. She was taken, in one minute put up against a wall and shot. We got yesterday's *Times*. The optimism and the buck nearly made us all sick. We may, and I think will, hold our lines, but if we do, it is through the unforgettable gallantry of the bravest soldiers in the world who are fighting without respite against great odds. Tonight we hear that the French are sending us considerable reinforcements, which will be a great help. The next two days are undoubtedly the most critical days of the whole war. All the Generals say so. If by Tuesday night next all our positions are well maintained, I think that the German campaign in France will have finally broken down. K(itchener) was over here today. I only hope that French was explicit. The 8th Division ought to come at once. My information is good because I go round with messages in the motor from one part of the line to another and see all the Generals, both Divisional and Brigadier.

"My dear, the Oxfordshire Yeomanry are actually in the trenches. I feel rather a cad when I think of my comparative safety and comfort. I am billeted here with a charming curé who cannot do too much

for me, and who sent the two enclosed cards for Freddie and Eleanor, desiring me to tell you that he prayed for me every night. Rather sweet!

"The Germans are drawing upon everyone. I saw a prisoner at St. Omer who was only 17 years old, had had only four weeks' military training, and of these two had been in the trenches. Poor boy, he was enchanted to be made a prisoner.

"We are holding with the Indian Army a line far too long for us, and we are holding it without reserves. The next days are very anxious. Don't imagine I have a vestige of doubt as to the ultimate result, but one does get a reaction from the sort of swagger and ignorant optimism which fills the English Press.

"I do hope, my dearest wife, that you will keep your spirits up. I reproach myself for not writing as cheerfully as I might, but it must be a pleasure for you to know the facts."

Bethune (November 3).

"Things are much better. We gave the Boche a bad knock at Ypres: the French have reinforced us very heavily and I am not sure the enemy is not going to retreat, which will mean, I hope, a drive into Belgium. Also very heavy reinforcements are just coming from England. We have been under very heavy shell fire, one Black Maria, as we were carrying a message, bursting within 20 yards of our motor, fortunately in a ploughed field where it could do no harm. I wasn't in the least afraid, which pleased me."

Hinges (November 11).

"Poor young Furneaux (his wife's cousin) and poor Gordon Wilson—the latter was killed most gallantly leading his regiment in a charge—another of our Blenheim lot gone. You would be astonished to see the phlegm and composure with which men here hear of death. There is nothing heartless, but they are too occupied and they may be next. 'Poor So-and-so, he was a gallant fellow', is all one hears of many a brave soldier.

"The Indians are behaving splendidly now. They are getting used to it. Poor wretches, they were marched straight from motor omnibuses into a style of warfare of which they knew nothing, and many of them shoved into trenches too deep for them, so that they could not even fire from them, and, so handicapped, they were exposed to the hideous concentration of shell fire.

"I am very well and complain bitterly because we don't get enough rations jam for breakfast."



Near Bethune (November 17).

"This morning I rode round with our General to interview the men who had been in our trenches for three weeks. They were splendid. They had been sodden and cold and exposed, and shelled out, and attacked by bombs: all the smart young officers had grown beards. But they had had twelve hours to tidy themselves in, and when we turned up the Sikhs burst into their martial full-throated war-song; it brought the tears into one's eyes.

"Yes, Bethune has been a good deal shelled, and as we came through yesterday, the poor inhabitants were drifting out in hundreds, carrying their pitiful belongings with them in bundles, going God knows where, in a cold and driving rain. I am not specially vindictive, but I greatly look forward to the time when the Germans will feel the severities of war on their own soil.

"Now it is all over, I may tell you that, when we first came up, we were so hard up for men at the front that our General with new and untried troops was given a line to hold twice as long as we hold now and with no reserves; now we hold half the line and have good reserves. He said to me (he is a very good soldier) one night: 'If I am strongly attacked I cannot possibly retain my position.' And half the grooms of the Staff were kept on duty all night ready to saddle the horses (poor Rogers!). You can imagine it wasn't agreeable lying in bed that night and listening to the constant artillery duel. However, all that is over now."

Bethune (November 21).

"At present, with our reinforcements, everything is going well in our line. We have handed over the defence of Ypres to the French, for we have done our show there with horrible losses. We think the Bosches will soon retire and hate the prospect, for they will destroy every house, and even the Staff, they say, will have to sleep out, which is damnable as it is now freezing hard. We are inclined to stick to our curate, as he is bon garçon and makes us comfortable, but, alas, we must move on with the army. [Such fears were, unhappily, premature—by nearly four years.]

"The Indians are doing very well and I have just sent another long article about them, but there are all sorts of jealousies among the other Army Corps Commanders at the comparative prominence the Indian Army receive, and I have to be very careful.

France (November 24).

"It froze here about 18 degrees a night for five nights. The days were difficult to get through. It must have been awful in the

trenches. We have had a great number of cases of frost-bite—seventy in one regiment. What they must have gone through, no one can imagine.

“ Things were very quiet here until yesterday. Then the Germans, after a terrific bombardment, succeeded in taking half a mile of our Indian trenches. They crept up close and threw hand-grenades in at a distance of 25 yards which burned up everything and everyone with inextinguishable fire. This was most serious, as we should have had to leave Hinges, our whole (Indian) line would have become untenable, and possibly the whole Allied line at this point, including the important town of Bethune, which is only two miles away and is an important railway centre where we do all our shopping. Accordingly the General directed at nightfall last night a resolute attack all along the line to recapture the lost trenches. We watched the battle for two hours in the frost last night at a distance of  $1\frac{1}{2}$  miles. It was most thrilling. The noise of artillery deafening and incessant, the sharper crackle of musketry, and, never ceasing, the luminous balls thrown by the hand grenades. The fighting was desperate and the courage shown by our people beyond all praise. All night we were prepared to move, but this morning we had the happiness of learning that our counter-attack had been completely successful. We retook the whole of the lost trenches, captured 97 men, 3 officers and 4 guns, and killed about 600 Germans. It was a glorious feat of arms attained at the cost of about 9 officers and 390 men killed and wounded. I went to see the wounded come back today—a cruel and horrible sight. One man with the lower part of his jaw, including his under-lip, blown completely away. He will recover, but what a fate! How much exceeding anything that death alone can bring.”

The Front (November 25). (To his children.)

“ Isn't it sad that we shan't have our Christmas this year together? But we are going to have a turkey and plum pudding and mince pies and champagne: what a feast! And I shall drink to your health. It has been freezing here and so cold for days. I was just going to send home for some skates when it stopped and today we went our first ride for nearly a week.

“ There have been so many German spies about here that we have had completely to clear all the villages round about here of their population. It is so sad to see the miserable people leaving their homes in this cold weather and nowhere to go. I gave a poor woman with two small babies and nothing but a tiny bundle two francs tonight. She was so pleased.

#### 44 FREDERICK EDWIN EARL OF BIRKENHEAD

"The war looks like a long affair. I expect when I come back Eleanor will have her hair up and Freddy be almost ready to join the Oxfordshire Yeomanry!

"I will try to collect you something for your museum."

Hinges (November 28).

"I have written a short account of the Indians' recapture of the trenches and shall write a fuller one later. The damned censors here spoil my articles with incredible childishness and stupidity. We lost 1,100 men and 40 officers in the business—horrible—far more than we thought when I wrote my first account of it.

(December 26.)

"We had Christmas dinner with C— yesterday: very good. Then I went round to see all the men at dinner and in each case I made them a little speech which went down very well. At present it is very boring. We have lost altogether 10,000 men. This is secret.

(December 29.)

"We got beautiful rooms here (I a large bed with electric light on each side to read) and that damned fellow Haig the General came and turned us out. Then on a wet morning we searched everywhere in vain for billets and at last found a picturesque old chateau with a moat round it which everyone had rejected as too damp. It isn't really damp and we have got the sole possession of it. We have enormous fires everywhere, including our bedrooms, and on the whole are very comfortable. It is huge and we are waited on by Ward and the two chauffeurs—quite amazing.

"Otherwise it is boring. They kept our people in the trenches too long: some of the natives had been in them at the end for ten days without change, standing up to their knees in water. Flesh and blood couldn't stand it and at the end they cracked up. Haig's army corps, which had been resting after a similar collapse, came and regained the line we had lost and now we shall rest for a month, and I have nothing to do but write the record of the last fighting, which is a slow business, as there are so many regimental reports to be read and compared. Well, anyhow, the Indians haven't done badly. They came at a most critical time in the war when we had not in France the necessary men to hold our lines and when we had not got them ready in any other part of the Empire. We were given a long line to hold—too long—and for two months the army corps held theirs absolutely intact.

"In my opinion their bolt is shot. I think that in a month or six weeks they will send them to Egypt, thereby releasing Territorials for France. I might go with them for a couple of months to finish my writing and see if the Turks put up a fight. Not a word of this to anyone as it is at present both secret and undecided, and I only draw inferences."

Near Bethune (January 13, 1915).

"I had a narrow escape yesterday. A horse I was riding, which I thought stupid but not vicious, wouldn't pass something and I smacked him. He then reared right up and came over backwards, not quite on top of me, but nearly, and this on a stone pavement. He then picked himself up all over me. I am badly bruised and shaken but not a bone broken. Everyone who saw it thought I was sure to get killed. I shall be up tomorrow.

"No news about our articles [written by F. E. as 'Observer' to the Indian Corps for publication in the Press] but I will let you know if there are any developments. Our General is splendid to me, but he says that he thinks Headquarters would not be at all sorry to be rid of me."

St. Venant (February 6, 1915). (On his return after short leave during which he was entertained to dinner at Gray's Inn.)

"We had a lovely crossing and I have very nice billets. I dined with the General last night who was charming, and I am going round with him tomorrow.

"There is heavy gunfire within hearing from where I write though we are out of range."

St. Venant (February 12).

"B. is very invaluable to me in a further development of the controversy with G.H.Q., in which the meek Major (F. E. Smith!) is just managing (by turning his cheek to the smiter) to keep his end up.

"You mustn't be angry, but I flew all over the German lines at Givenchy and La Bassée yesterday. I had a splendid chance with the best pilot here, who told me he wasn't taking chances that day and meant to bring me back alive. It was thrilling, but damned cold. We were up two hours and a half."

St. Venant (February 17, 1915), Indian Army H.Q.S.

"Jimmy — has sent me six dozen oysters, a hare and two bottles of 1811 brandy: isn't he an angel? S. is staying with me tomorrow

night and we are dining with the General, so I am sending him the oysters and the hare with my compliments.

“French’s account of the recent Indian fighting is most misleading. Willcocks was directly ordered to take part in a general attack all along the line, and now it didn’t turn out well F(rench) makes out the orders were only for a reconnaissance. He doesn’t actually censure W(illcocks) because he knows he could be given away, but it isn’t true in the sense he suggests that Haig took over the command from W(illcocks); he only took it over as and because Haig was taking the place of that of W(illcocks). The 10,000 casualties we suffered in that attack were due and only due first to G.H.Q. wrongly assuming (and how could that fatuous intelligence department be right?) that the Germans had greatly weakened in the theatre of war, and secondly to the vacillating, constantly changed and mutually contradictory orders that were issued from G.H.Q. However, one day I will make all these things clear.

Sir John French, in the despatch of February 2, 1915, which infuriated Smith, said that he and the French commanders had thought that “the enemy had withdrawn considerable forces from the western theatre”. He was asked by the French to “continue demonstrations” along his line. He goes on to say that—

“In his desire to act with energy up to his instructions to demonstrate and occupy the enemy, the General Officer Commanding the Indian Corps decided to take advantage of what appeared to him a favourable opportunity to launch attacks against the advanced trenches in his front on the 18th and 19th December.”

The attacks were delivered with great gallantry but, as might have been expected, resulted in very heavy losses with no countervailing advantages.

The 1st Corps, under General Haig, was ordered on December 20 to support the Indian Corps, and on December 22 “Sir Douglas Haig took over command from Sir James Willcocks”, whose exhausted troops were gradually withdrawn.

Sir John French added that “the Indian troops have fought with the utmost steadfastness and gallantry whenever they have been called upon”.

“I hope to be home in a month or five weeks and shall run no risks between now and then, nor shall I fly again. But you wouldn’t

like me to have refused such a tempting invitation, especially as I knew my pilot intended to bring me back safe.

"King's question in the House of Commons was entirely friendly. He wrote to assure me of this and to say that he had been anxious to read more of what one had written.

"Thanks for sending the books. I hope they will come soon. I have read a lot of Dumas here. He is fascinating. What a sweep and gallop of narrative! Reread in French *The Three Musketeers*, *Twenty Years After* and *The Man in the Iron Mask*.

February 22, 1915.

"No news here except that French's secretary asked me to dinner. Rather amusing, and I couldn't go as I was dining with Willcocks and wasn't going to chuck him. I think it a distinct score under all the circumstances being mentioned in despatches. There it is anyhow for what it is worth and is rather a smack in the teeth for people like that little swine from the *Globe*.

"I have had a good deal of work to do, as French's despatch released a lot of stuff I had to write."

February 24, 1915.

"The General is being charming to me and saves the whole situation. I have almost finished a very long account of the fighting before the Indians left the trenches—the part French dealt with. It has taken me a long time.

"I am afraid the General will feel my going awfully when I leave. I haven't given him a hint yet, and he is relying on me to do him justice after the war. F(rench) treated him so badly in his last despatch, but he didn't care a damn. F(rench) came over sheepishly to apologise, but W(illcocks) said: 'Explain what, sir? There's nothing to explain. I don't care what you say or don't say about me, but if you had not done justice to my troops I would have resigned my command.'

"Isn't it nice to think that I will be home perhaps for a month in 28 days?"

St. Venant (February 26, 1915).

"I don't think that the Russians so far have had such a very bad knock after all, and they seem to go on killing Germans, and after all at this stage it doesn't matter where they kill them. So long as the Bosches don't get Warsaw and its railways, nothing there is decisive.

"The weather here has been too vile. One of my horses is lame

and my motor broken down, so I am rather bored and tied by the heels, but I have been working very hard to finish my account of the Battle of Givenchy covering the period dealt with in French's last despatch.

"I got all your books. Thank you so much. *David Copperfield* is really very charming. Poor little boy when he went to school. I thought of Freddy."

March 8, 1915.

"About staying at home, it isn't quite so simple as it sounds. You see, my regiment is on active service. It is as much under discipline as C's company. I needn't go to it as long as I am formally seconded under circumstances of military employment of a nature to earn pay. I could not (I mean literally I would not be allowed to) come back to the Bar and have no genuine military occupation. Otherwise I could not remain seconded.

"I am not having *fun* here. I hate it; it would be different if there was variety and an advance. This sodden immobility is appalling. But my health never was better (*unberufen*): I feel as strong as a bull."

Undated (March 12? 1915).

"All well. Home in about 8 days. I have seen a lot of this fighting: we have done awfully well—the Indians. I am frightfully busy as we are just moving billets, going to Lestrem near Estaires."

(This last brief note refers of course to the desperate and most costly action of Neuve Chapelle, March 10–12, 1915, in which the whole Indian Corps was engaged.)

France (March 22).

"I was in Paris the night of the Zeppelin attack and saw a Zeppelin. I lunched with C<sup>1</sup> yesterday. He is very cheery but very homesick and absolutely fed up with this show, as we all are.

"Well, I am absolutely coming on Sunday next.

"Yes, the fighting here (Neuve Chapelle) was great, and it only just missed being a much bigger show. If the 4th Corps could have got through its job all right, we should have attacked nearly all along the line—I saw it well."

Lord Crewe told the House of Lords in February, 1915, that F. E. Smith had sent seventeen letters by mail or cable

<sup>1</sup> Colonel Claude Furneaux, F. E. Smith's brother-in-law.

to the Viceroy for publication in India, but that only five had been issued to the British Press. It was much regretted at the time that fuller prominence was not given to "Observer's" accounts of the work of the Indian Corps. He was mentioned in Sir John French's despatch of February, 1915, among staff officers who had done gallant and distinguished service.

Smith came home on leave at the end of March, 1915, and in April was appointed to a military court of inquiry set up to investigate a complaint against the British Empire committee which had raised the Empire Battalion of the Royal Fusiliers (City of London Regiment). Early in May he was appointed a member of the Committee of Inquiry into the sinking of the *Lusitania* by a German submarine off the Irish coast on May 7. A few days later he was to return to politics and for the first time to take office.



### III

#### *LAW OFFICER (1915)*

**T**HE Liberal Ministry which had begun the war in August 1914 was confronted in May 1915 by a sudden crisis. Lord Fisher, the distinguished First Sea Lord, who enjoyed great prestige with the public, if not with his colleagues, resigned on May 12, as the outcome of disagreement with Mr. Churchill in respect of the Gallipoli Expedition. Thereupon Mr. Bonar Law and Lord Lansdowne, the Unionist leaders, warned Mr. Asquith on May 17 that they must either raise a debate in Parliament, which they admitted was at the moment undesirable, or have an assurance that the Government would be reconstituted so as to retain public confidence. Mr. Lloyd George on the same day told Mr. Churchill that he too had asked Mr. Asquith to form a National Coalition Government. The Prime Minister had no option but to yield, and in a few days the First Coalition was formed of Liberals and Unionists with Mr. Arthur Henderson at the Board of Education to represent the Labour party. Sir Edward Carson was appointed Attorney-General in the face of strong objections by Mr. Asquith's ally Mr. Redmond, who would not himself enter the Ministry, but wished to exclude Irish Unionists from it. F. E. Smith was chosen at Mr. Bonar Law's instance, and with the general approval, as Solicitor-General. It may be mentioned that many of the would-be Cabinet makers in the Press, attempting to guess at the redistribution of offices, had given F. E. Smith Cabinet rank as Attorney-General or Home Secretary. This, although premature, showed the high opinion which experienced parliamentary journalists felt for the young member for Walton.

An old friend recalls that Mr. Bonar Law at this juncture had been strongly urged to recommend another Unionist politician, whom we will call B——, for office in place of F. E. Smith. Not

only was B—— insistent, but B——'s son conceived himself to have a claim to minor office. When Mr. Bonar Law hinted that perhaps the young B—— ought to be provided for, F. E. Smith caustically observed that there was a pressing necessity to provide for his daughter Pam, then a few weeks old. He said that Pam, at any rate, could out-shout the young B——, and that if he was going to be laid on Mr. Asquith's doorstep, Pam would be put there too.

F. E. Smith, as a law officer from May 1915 to the end of the war, was occupied with the enormous mass of legal business that accumulated in connection with the Defence of the Realm Act, the Military Service Acts, Labour Regulations, the taking over of properties, espionage, and the incessant work of the Prize Court. He seldom had time to speak in the House, unless he was relieving a colleague, or taking charge of a Bill. His absence was not allowed to pass unnoticed. On March 16, 1917, Mr. Pringle, in the course of a debate, observed: "It is a rare privilege to see the Attorney-General in his place," and that he would take the opportunity of asking what was the status of the numerous members who were doing war jobs—controller of this or that. F. E. Smith replied: "I am always in my room from the time the courts rise at four till dinner-time, in consultation, and always available for the service of the House if the House wants me." He added that members who had jobs were presumably found useful.

F. E. Smith was only Solicitor-General for six months. The most interesting case with which he dealt during this period was concerned with the German Hospital Ship *Ophelia*.

This case was heard in the Prize Court, an extraordinary tribunal which only comes into existence in war-time, the principal jurisdiction of which is the decision as to whether the cargoes of enemy or neutral vessels have been captured properly according to the rights of emergency war-time search. The law administered in this court was International Law, and its proceedings had been marvellously clarified by its president, Sir Samuel Evans, who had skilfully adjusted ancient rules to cope with contemporary conditions. It can easily be imagined that, as supplies became more and more difficult to obtain, and the Germans more and more desperate, the court was in

constant session, and that many intricate cases were heard in it, involving, on the part of all concerned, the closest knowledge of commercial fact. The process of proving such information was built up into a system, and placed in the hands of the Procurator-General, who also acted as Crown Solicitor in all Prize Cases, an enormous bulk of specialist knowledge from which his expert subordinates could hew out the case for the Crown. There was no living experience of the working of Prize Law in this country. A new Prize Act had been introduced since the court last sat, during the Crimean War. Further difficulties were added by different Orders in Council issued during the war, and the greatly altered modern conditions made it a difficult and delicate matter to apply many of the old decisions of Prize judges. In the hands of the President, Sir Samuel Evans, the exalted standard of administration of Prize Law set by Stowell and Grant was fully maintained.

There began on both sides a process of sapping and mining. Baffling codes were devised in the arcana of the German Secret Service: they were solved by the English experts, and superseded by others. The artifices of evasion became more and more complex—obscure allusions, false trails, all possible methods of secret communication were revived and strengthened by modern invention and high-speed telegraphy. The detective side of the work was in itself unceasing labour, and when it had been accomplished, the machinery of the Prize Court was set in motion, and the principles of International Law applied to the cases. Altogether the justification of British seizures at sea was a work of tremendous scope and responsibility.

The *Ophelia* was a German-owned merchantman. Just before the outbreak of war she steamed down the Thames on August 3, 1914, bound for Germany. There she was sent to a naval yard and fitted up as a hospital ship, and painted with the white hull and red cross of her kind. The duties of such a vessel consist only in helping the wounded and shipwrecked; if hospital ships adhere to these duties they are completely immune from capture or molestation under the Hague Convention. In no circumstances must they be used against the interest of the enemy power. The principles of this case were not difficult, and lay in the charge that the *Ophelia* had exceeded her duties, that she was in fact an enemy scout, and

not a hospital ship, and from her equipment could never from the first have been intended for this purpose. The difficulty of the case lay in the immense confusion of detail. Was her equipment that of a normal hospital ship? To decide this, experts had to compare it with that of other vessels. What had her exact movements been? For this question long evidence had to be taken from eye-witnesses on British warships; the confused ship's papers had to be examined with care, the crew interrogated and their different statements compared with the Crown evidence.

All these difficulties meant that much explanatory work had to be done before the case could be brought into court, and the Crown lawyers had to analyse and fit into their case the opinions expressed by the Admiralty experts.

Her movements, as observed, had certainly been suspicious. She had been twice seen by British ships, first on October 8, 1914, by a British submarine commander who was coasting off the mouth of the Ems. It was alleged that the *Ophelia* had been ordered to the Ems two days previously to help a German torpedo-boat which had been sunk there on October 6. The captain of the *Ophelia* came into court and gave evidence. He was very vague about these instructions, and was unable to say anything definite. It is clear, at least, that he was not told where the sinking had taken place, and that he did not know on the 8th. All that he could say was that he "thought" that he had been given these orders, and that he had been told about the sinking, and that he "thought" that he had been told that some of the crew had survived. The curious fact remained that his ship was coasting off the mouth of the Ems, miles away from the scene of the sinking, and two days too late to be the slightest use in his alleged task.

Her movements made the British submarine commander suspicious: he went full steam ahead after her; instead of waiting for him to approach her, which would have been natural if she had been innocently employed, she retreated, and got away from him with only a four miles' start. It was contended in court that this was impossible, on the grounds that the *Ophelia* was only capable of nine knots, whereas the submarine was steaming after her at eleven knots. Smith disproved this by reading out her pre-war log, and showing that

on a number of other voyages she had consistently averaged eleven knots. The Crown pointed out that this "hospital" ship, acting on orders which she had never received, in a position where she could do no legitimate work, fled in broad daylight from a British submarine, although on her own admission she had not finished the work on which she said she was engaged. This was, by itself, a damaging case which was strengthened by another circumstance. On October 6 a flotilla of German torpedo-boats made a sortie from the river Ems; they were cut off by British submarines, and one of them was sunk. The rest of them had since then lain safely up the river, and it was an obvious inference that far from being a hospital ship the *Ophelia* was a scout who kept the German torpedo-boats informed of the position of English submarines, and relied upon her appearance to protect her from the attack which would have been made on any other form of ship. This was the first occasion on which she roused suspicion. The second led to her downfall.

On October 17, 1914, the *Ophelia* sailed to another lightship for further orders. The circumstances were much the same as before, for the German Navy had lost four torpedo-boats on October 8. The *Ophelia* sailed to the scene of the sinking, and began to flash code messages to the great German wireless station at Norddeich. These messages revealed her position. Where did she get her instructions from, and how was she made aware of the disaster? It is still obscure and unknown. Her wireless record contained no such messages of instruction as it should have done. Again, what message was it that she was sending forth in a secret code? The case for the *Ophelia* was that she had been sending for instructions, but here the times did not correspond, for the *Ophelia* claimed to have sent out her request for instructions at midday, and the secret code messages were not intercepted until the afternoon. Besides, there was no conceivable pretext on which a hospital ship could justly send messages out in code.

The *Ophelia* was watched for some time: then she was seized on suspicion. Her captain had, acting on the most vague instructions, taken his ship to the precise point where she might be wanted. It appeared to be almost intuitive. When the captain of the *Ophelia* saw that his vessel could not escape

search he threw all the codes overboard, together with every other record of the ship's activities. This was a complete breach of International Law, which was inadequately explained away by saying that they had thought it wiser to jettison everything, if they were once to throw away their codes. This was clearly a futile explanation because it involved the admission that they had thrown away consciously the evidence that could establish their innocence. It was also significant that no attempt was made to obtain such evidence from the records of other ships with which the *Ophelia* had been in communication.

The nature of her equipment was even more damning. An expert was called in to decide whether she was suitably equipped as a hospital ship. He was given to understand that it was contemplated using her in this capacity and that the authorities wanted to know whether any alterations were necessary. His report was therefore completely unprejudiced, and was to the effect that she was unfit for hospital work and was designed and equipped solely as a signalling vessel. Her signalling apparatus was far too elaborate to be necessary on an ordinary hospital ship. Several expensive devices had been installed to increase her wireless range, and no plausible explanation was offered of their presence, beyond the plea that the curious extra-signal halyards on the funnel had been fitted because the original ones had interfered with the wireless. But it was admitted that this was an inconvenience which seldom occurred, and it was difficult to believe that the feverish work of a war-time German shipyard would have been interrupted for such a trivial purpose, which entailed so much trouble. The only possible advantage of the change was that the *Ophelia* would be able to signal over longer distances. Besides these additions the *Ophelia* was stocked with an enormous number of Verey lights, of different colours, 1,220 in number, which could be discharged from special pistols. This again was entirely inconsistent with the necessities of a hospital ship; for the British ships carried only twelve such lights of each colour. The Captain of the *Ophelia* was asked what explanation he could offer for this large quantity of lights. He had difficulty in suggesting any but the most farcical reasons. He said that the lights were used instead of a searchlight—to shine on the sea at night, a suggestion which conjured up pictures

of continual pistol fire from the bridge of the *Ophelia*, to show her navigating officers what they were doing. Besides, the darker red and green lights would be worse than useless even for this purpose. If she wished to illumine the sea, why had she not got a searchlight? The captain made another attempt; he said that the Verey lights were sometimes used to acknowledge Morse code signals which were out of range of the *Ophelia's* Morse lamp. This was conceivable, but why were there such quantities of Verey lights on board?

The conclusions which leaped from all these facts was clear. The *Ophelia* was useless for her alleged duties, but she was able to send wireless and other messages over longer distances than any normal ship. Twice she was found after the sinking of German ships: her instructions were never found or produced, and her alleged purpose was absurd. It seemed most probable that, profiting by her immunity from attack, she was collecting and despatching information about the movements of British ships, of the greatest moment to the German navy, and all the time secret messages were leaving her wireless room, of which she could give no explanation.

The object of the Crown was to prove that she had been lawfully taken, and for this purpose it was necessary to show that she had violated the Hague Convention and forfeited the immunity from seizure which that convention conferred on hospital ships.

The claimants were the Germans, but the captain of the *Ophelia* made the claim on behalf of the Government. The case for the *Ophelia* was argued by English counsel who were retained for the purpose. A long and complicated review of all the evidence followed, at the end of which Sir Samuel Evans held that the *Ophelia* was not equipped and used solely for her official purpose—relief of the wounded and shipwrecked—but that she was specially adapted for the purpose of naval signalling. Therefore she had forfeited the protection given by the Hague Convention.

The case was considered on appeal by the Judicial Committee of the Privy Council, which arrived independently at the same conclusion. Smith's argument had alleged a finding of fact against the appellant: he had said that the appellant could only succeed if he could prove that there was no evidence in

support of it. It was a non-jury case, and the court did not sustain this argument, but Smith agreed that the case was conclusive without it.

The *Opbelia's* failure was important in the history of seizure at sea. It showed that it was dangerous, if not impossible, for ships to shelter under the Hague Convention as a cover for naval operations. The *Opbelia* was the last German hospital ship which attempted this ruse; the Crown lawyers had, by their interpretation of International Law rendered a great service to the Admiralty.

F. E. Smith was too preoccupied to play any notable part in the political manœuvres that marked the years 1915 and 1916 of the First Coalition. Sir Edward Carson resigned the Attorney-Generalship on October 20, 1915, severing himself from the First Coalition. It became evident, in the debate of November 2, that he objected to the Cabinet's Salonika policy, and held the view that Greece should have been forced to honour her bond to Serbia.

For the post thus vacated the late Lord (then Mr. George) Cave was strongly fancied by himself and his Conservative friends. But Smith had other views. He invited Cave to call upon him. They had twenty minutes' talk in private. When Cave came out, he had agreed to accept the Solicitor-Generalship under his junior colleague and to wait for the higher post. Smith was appointed Attorney-General on November 4, 1915.

An Attorney-General is a very busy man even in times of peace. But Smith's tasks for the remaining three years of war, as has been indicated already, were multifarious and overwhelming. The legal work of the office was immensely enlarged by the innumerable prize cases and by the many problems that move under the Defence of the Realm Act and its novel rules and regulations. The Attorney-General had also to advise the Cabinet on the new and difficult questions of International Law and of public policy that were always arising. It is little wonder that he was but seldom seen in the House of Commons during the war and rarely intervened in domestic politics.

A friend who saw much of Smith and his staff at this time says that the Attorney-General was a great organiser. He was not one of those unwise men who try to do everything by themselves. On the contrary, he got his work done for him



by competent hands and was careful to see that it was well done. He always noticed a mistake, however trivial, whether in matter or in style, and was—in private—a relentless critic of his assistants. On the other hand, he always took full responsibility for anything done in his name or under his nominal direction, and would never have a subordinate blamed by any other authority. The natural result was that he had a most loyal and devoted staff who spared no pains in maintaining the reputation of the office and of their chief.

In December the relative failure of Lord Derby's voluntary recruiting scheme brought the question of conscription to a head. On January 1, 1916, Sir John Simon, the Home Secretary, resigned, and on January 5 the Conscription Bill had a first reading by 403 to 105. Under the Derby Scheme, 2,829,000 men had been enlisted or been rejected. There remained 2,182,000, of whom 1,029,000 were single, and it was estimated that 651,000 of the single men were available. The Bill received the Royal Assent on January 27, 1916.

In February 1916 there occurred the extraordinary episode of the arrest of F. E. Smith, the law officer, charged with the ultimate decision on appeal in all Court Martial cases—by the military authorities when he was on a visit to the General Headquarters in France. The behaviour of the soldiers on this occasion really brought home to the public their stupidity and incredible pettiness of mind. It was the old loathing of the soldiers for the politicians reappearing in a new and dangerous form. The pretext for the arrest was ridiculously inadequate: Smith had not been given his "pass", and had not realised that he must have one. The result of this omission was that a Minister of the Crown was arrested, treated with every circumstance of ignominy as a common prisoner, and incarcerated by the authorities at General Headquarters, who saw a heaven-sent opportunity of insulting and publicly humiliating a civilian, and who never appeared to consider what the results of their insane action would be.

Lord Beaverbrook was on the spot, and has given a first-hand account of the incident.<sup>1</sup> He went to France as the military representative of the Canadian Government. He had gone to Paris to see Mr. Bonar Law, then Colonial Secretary,

<sup>1</sup> *Politicians and the War*, Vol. I.

whom he found in the company of Mr. Lloyd George and F. E. Smith. Mr. Lloyd George and Mr. Bonar Law had arranged to visit G.H.Q. F. E. Smith said that he would like to go with them, and asked Lord Beaverbrook to send him by car. Lord Beaverbrook answered that it would be wiser and more regular to go with the others by train to Boulogne, to which F. E. Smith agreed. Lord Beaverbrook also advised him to telegraph to Haig's secretary for a permit to enter the military zone, which he at once did.

The whole party then took train for Boulogne, where the Ministers found motor-cars awaiting them. Lord Beaverbrook separated from them and drove to St. Omer alone. Mr. Lloyd George, Mr. Bonar Law, and F. E. Smith entered the same car. No passes were ready for them, and Mr. Lloyd George impatiently told the driver to start. Thus it was not noticed that no pass had been issued for F. E. Smith. There was accommodation at St. Omer for Mr. Bonar Law and Mr. Lloyd George, but none for F. E. Smith, who was put up by Lord Beaverbrook at the Canadian Headquarters. He was wearing a uniform. F. E. Smith procured a car and went to visit Mr. Winston Churchill. They were setting out to the trenches together at 1 a.m. when Smith was suddenly arrested and brought back to Headquarters on the grounds that he had entered the military zone without a pass. He was taken to the Hotel du Commerce at St. Omer, where he was kept in custody for the rest of the night.

Next morning he was solemnly summoned before the Adjutant-General at his Headquarters. The Adjutant-General, General Macready, had obviously been meditating for some time the question which he put to Smith. He said: "If you are a civilian, why are you here in uniform? If you are a soldier, why don't you obey the regulations?" After interviewing Macready for some time, Smith returned to Lord Beaverbrook's quarters and went to bed.

Mr. Churchill regarded the arrest as a very serious event, and wrote in a letter to Mr. Bonar Law :

"The act of placing the Cabinet Minister charged with the ultimate appeal in all court martial cases in arrest, and removing him in conditions of indignity, is one which cannot and will not end in France.

It will become public knowledge, and will draw with it many other things. . . .”

Lord Beaverbrook records that the incident greatly upset Mr. Bonar Law, and “confirmed a view which had been growing in his mind that the mentality of soldiers was sometimes concerned with the day of small things”. He remonstrated strongly with Lord Haig about the arrest, and demanded that an apology should be made to F. E. Smith by the military, who had intended to send the Attorney-General under a guard to Boulogne and deport him, like an undesirable alien, as having no pass. Eventually explanations and apologies were offered by Haig, and accepted by F. E. Smith, but the incident did him considerable harm, for garbled editions of the story, greatly to his discredit, passed from mess to mess for months. It is quite possible that F. E. Smith was guilty of carelessness in not providing himself with a pass, but the action of G.H.Q. was inexcusable.

There is a glimpse of F. E. Smith’s work with espionage in his answer to C. P. Trevelyan on March 23, 1916. Trevelyan had complained that an English squire’s daughter had been interned since September 1915, to which F. E. replied that the girl was the friend of a notorious German spy. She had been with him in Switzerland and had brought from him a message and some seditious literature to England.

For a time Irish affairs again occupied the Cabinet. As a result of the Easter rebellion (1916) in Dublin, Mr. Lloyd George started communications with the Nationalists and offered Home Rule as an immediate object. This led to Selborne’s resignation and almost to the resignation of Lansdowne and Long. In the end the negotiations for an Irish settlement failed.

## IV

### TRIAL OF ROGER CASEMENT (1916)

**D**URING his service as Attorney-General Smith prosecuted in a case the fame of which will survive for all time— Sir Roger Casement's trial for High Treason in June 1916. In the April of that year the news was suddenly published that Casement had been arrested by the Irish Constabulary on the Kerry coast and that conditions suggested an attempt to introduce men and arms for the purpose of raising rebellion in Ireland.

The man on whom this charge rested was cultivated and distinguished. Employed for twenty years in the Consular Service, he had, in 1913, retired and accepted a pension from the British Government. Two years before his retirement he had been knighted. He had attracted public attention when, early in the century, as our Consul in the Congo Free State, he had reported adversely on the conduct of the rubber industry by means of forced labour. From 1909 to 1912 he had been Consul-General at Rio de Janeiro, and had again become conspicuous on account of his inquiries into the Putumayo rubber industry. He was not known during these years of loyal and useful service to have identified himself with any of the popular movements in Ireland, but from the end of the year 1914 he was in Germany, in close communication with the Germans and granted every privilege by the German Government. It was said, too, that his activities brought him into constant touch with the Irish prison camps, and that he had often made speeches to the prisoners. It is not known whether the Government of the time was closely informed of the nature of these activities, but in February 1916 a number of Irish prisoners with whom he had been in contact at the great camp of Lahn Limburg, were exchanged by the Germans, with extraordinary indifference to Casement's safety which the stories of these men would clearly endanger.

Such was the man, and such the enterprise on which he was accused of embarking, an enterprise of High Treason against the Sovereign who had honoured him with a knighthood and whom he had conscientiously served during a long career. The public attention was at once captured, and rose to intense excitement when another story was published a few days after the arrest.

On April 21 the British sloop *Bluebell* was coasting off Tralee Bay on patrol. Suddenly through the haze she sighted another vessel rising and falling on the slight swell, not far away from her. There was something about this vessel which at once made the captain of the *Bluebell* suspicious, though she was sailing under the Norwegian flag. He signalled to the ship and received an answer that she was the *Aud* of Bergen. He took her in charge and ordered her to follow the *Bluebell* to Queenstown. The two ships stood off Queenstown; the *Bluebell* turned about, foamed round in a large circle, and approached the *Aud*. A cloud of white smoke rose from the *Aud*; simultaneously German ensigns were broken at the masts, and two boats lowered from the davits, the men on which were taken on board the *Bluebell*, and placed under an armed guard. They were German sailors, 22 in number, 19 seamen and 3 officers. The *Aud* began slowly to settle in the water. Soon she slid below the surface and disappeared. Divers sent down later found many rounds of ammunition strewn on the bed of the sea, and brought to the surface a Russian service rifle of the 1905 type.

Shortly after Casement's arrest, the Sinn Fein revolt broke forth, and seemed inevitably to point to an intended synchronisation with the arrival of arms and ammunition, and it appeared obvious that Casement had, subsidised and supported by the Power with whom England was at war, planned to join the conspirators who were maturing this rebellion.

He was taken to England, and said in a statement to the police, "I am Sir Roger Casement, and the only person to whom I have disclosed my identity is a priest in Tralee, Ireland." He was confined in the Tower, in which later he was to long in vain for the distinction of a military execution, and on May 13 he was taken to Bow Street Police Court to listen to the charge that was to be made against him.

The magisterial inquiry took place at Bow Street on the 15th,

16th and 17th days of May. The sun streamed into the court through the glass roof, touching with gold the dingy books, the tables, and the witness-box, and shining upon the iron cage in the middle of the room. A crowd of men and women drifted into the court, followed by a procession of Irish witnesses, hats in hand, dazed with the strangeness of the scene, jostling one another, and treading on each other's feet. The Attorney-General strolled casually into the room, and exchanged greetings with Mr. Bodkin and Mr. Travers Humphreys. The police court appeared no place for him; as usual he was elaborately dressed, with the black hair smoothed and oiled to perfection, and the dinginess of the court seemed enhanced by his presence. The magistrate followed and took his seat after bowing to counsel.

Then there was a hushed pause, while two prisoners entered the dock. The eyes of all were turned on Sir Roger Casement as he walked nervously into the cage. His whole body was alive with sudden movements. The hands were exquisite: brown, tapering and sensitive. His fingers flickered about like the antennæ of an insect; flashed to ease his collar, then dropped to finger his coat. All his features were in motion; he twitched and moved; his face was never in repose. It was an arresting face, deeply burned by the suns of the South; the nose was short, the eyes exhausted and impenetrable, the forehead high and studious, the beard pointed. It was a beautiful, almost a spiritual face, like an Elizabethan adventurer's, but when it moved into the patches of sunlight it carried more than a suggestion of the febrile nature beneath. But it was not the face of a sensualist, and few looking at it can have imagined that Casement was a sexual pervert.

The formal charge was preferred against him "that on the first day of November 1914 and on divers days thereafter, and between that day and the 21st day of April 1916 he (with a fellow prisoner, Daniel Julian Bailey) unlawfully, maliciously, and traitorously did commit High Treason without the realm of England in contempt of our Sovereign Lord the King and his laws to the evil example of all others in the like case, offending contrary to the allegiance of the said Sir Roger Casement to our said Sovereign Lord the King, and against the form of the statute in such case made and provided".

Casement was never still for an instant. Now he was leaning back, with the sombre eyes fixed on the ceiling : then in a second he would seize a pad and scribble feverishly ; next thrust his head between his knees and bite his nails ; then scan the court, catch an eye and smile, then lean forward again, to hear the responses of the witnesses.

The Attorney-General rose slowly and addressed the court, presenting the Crown case. Casement sat listening intently, and a strange smile now and then parted his lips. The Attorney-General suggested that it was very important that the proceedings should be pushed on as quickly as possible, owing to the uncertainty of Irish affairs. The Government were not slow with the indictment, which was presented to the Grand Jury of Middlesex on May 25 ; after an address on the facts and the law from the Lord Chief Justice, Lord Reading, they returned true Bills against both prisoners.

Counsel were next assigned to the prisoner, an archaic proceeding which survives as a relic of the old Treason Act. The leading counsel assigned to Casement was Serjeant Sullivan, Second Serjeant of the Irish Bar, who had been called to the English Bar in 1899. Mr. Thomas Artemus Jones was the second counsel assigned to Casement. Professor J. H. Morgan was allowed to address an important argument to the court as *amicus curiae*, although he was not assigned as counsel.

The defence on facts, upon which his counsel relied, was that Casement had not plotted against the King, but was preparing to use the force and arms he had prepared, to combat the Ulster Volunteers in their resistance to Home Rule. Here was a further peculiarity of the case, that the Attorney-General had taken so prominent a part in favour of the movement which Casement claimed to have been threatening. The trial was fixed for June 26 in the Lord Chief Justice's Court. It was before the Lord Chief Justice, Lord Reading, Mr. Justice Avory, Mr. Justice Horridge, and a jury. Counsel for the Crown were the Attorney-General, the Solicitor-General (the Rt. Hon. Sir George Cave, K.C., M.P.), Mr. A. H. Bodkin, Mr. Travers Humphreys, and Mr. G. A. H. Branson, instructed by Sir Charles W. Matthews, K.C.B., director of public prosecutions. The prisoner's counsel were instructed by Mr. G. Gavan Duffy, and assisted by Mr. Michael F. Doyle of the American Bar.



LORD BIRKENHEAD

*From a portrait by A. J. MUNNINGS A.R.A.*





After the Master of the Crown Office had read the indictment, Serjeant Sullivan rose and moved to quash the indictment on the grounds "that no offence known to the law is disclosed by the indictment as framed". The Lord Chief Justice replied that it was for the Attorney-General to object if he wished to the motion for quashing, but suggested that it would be more convenient if the motion was raised at the end of the case for the prosecution, to which the Attorney-General assented. Casement then pleaded "Not Guilty" in a firm clear voice.

The Attorney-General rose to open the case for the Crown. He spoke very quietly and very unemotionally, and very impartially. He described Casement's character, and said that, unlike many of his countrymen, he had been no lifelong rebel against English rule, and all that it stood for. "His career", he said, "had not been without public distinction, and the earlier stages of it, it may even now be remembered to his credit, were directed, not to the destruction of the power of this great Empire, but to its consolidation and development." He made a telling point, but made it languidly and without bitterness, of the fulsome letter of thanks in which Casement acknowledged his knighthood in June 1911, as contrasted with his later attitude.

THE SAVOY,  
DENHAM, BUCKS.

DEAR SIR EDWARD GREY,—

I find it very hard to choose the words in which to make acknowledgment of the honour done me by the King. I am much moved at the proof of confidence and appreciation of my service on the Putumayo conveyed to me by your letter, wherein you tell me that the King has been graciously pleased to confer upon me the honour of knighthood. I am indeed grateful to you for this signal assurance of your personal esteem and support. I am very deeply sensible of the honour done me by His Majesty. I would beg that my humble duty might be presented to His Majesty when you may do me the honour to convey to him my deep appreciation of the honour he has been so graciously pleased to confer upon me.

I am, dear Sir Edward,  
Yours sincerely,  
ROGER CASEMENT.

He went on—"and this was in 1911. The history of the relations of England and Ireland up to that date were as well known then as they are today. The controversies, bitter and protracted, often tragic, springing from these relations, were either the commonplaces of contemporary politics, or they filled the pages of our better-known elementary histories. And, well understanding these controversies, fully versed in the wrongs of which Irishmen were fruitful of complaint, knowing England's ideals of government well—for at the outposts of Empire he had carried them out—he sends his humble duty to his sovereign. What occurred between 1911 and 1914 to affect and corrupt the prisoner's mind, I cannot tell you, for I do not know. I only know of one difference. The sovereign of the country to whom his humble duty was sent in 1911 was, in that year, the ruler of a great and wealthy nation, living at peace, unassailed, and it almost seemed unassailable. In 1914 this same nation was struggling for its possessions, for its honour, for its very life, in the most prodigious war that had ever tested human fortitude. To the sovereign of that country, in the hour of its unchallenged greatness, he sends his humble duty. It will be my task now to acquaint you with the manner in which he carried out his humble duty in times dark enough to test the value of the unsolicited professions he was so forward in making."

He went on to describe Casement's movements in Germany among the Irish prisoners, at the great camp at Lahn Limburg, where they had evidently been collected for a special purpose. "The Irish prisoners of war were there," he said, "emotional, excitable, uninformed, the easy victims, it was hoped, of seduction. Nor was the seducer wanting: the letter writer of 1911 was to be tested. . . . I do not think it likely that he dwelt upon his own connection with the country that had afforded him a career, which had decorated him with a title and from which he had accepted a pension. I suspect that he did not inform them that three years before he had sent his humble duty to the sovereign whose soldiers, while their hearts were heavy with captivity, he was attempting to seduce and corrupt."

Casement presented himself to these men as "Sir Roger Casement, the organiser of the Irish Brigade", which he invited all the prisoners to join. He told them that Ireland had everything to gain by Germany winning the war, and that the prisoners

could strike a powerful blow for Ireland by entering the service and receiving the pay of Germany. He promised that those who joined the Brigade would be sent to Berlin as the guests of the German Government, that if Germany won a sea battle Casement would land a brigade in Ireland to defend Ireland against her enemy, England. If Germany were to lose the war, Casement guaranteed that either he or the Imperial German Government would provide each person in the Brigade with a bonus of £10 to £20 and pay his passage to America. "Gentlemen," said the Attorney-General, "to the honour of Ireland be it recorded that the vast majority of the Irish prisoners treated the rhetoric, the persuasions and the corruptions of the prisoner with contempt. He was received with hisses, and was, on one occasion, driven from the camp. The Munster Fusiliers were particularly prominent in their loyal resentment of the treacherous proposals made to them. One private in the regiment actually struck, so it is recorded, the prisoner, who was saved from further violence by the intervention of an escort of Prussian Guards which had been assigned to him for his protection by a nation which thinks of everything."

Among the prisoners at Limburg was a man named Bailey, who was seen wearing a green uniform with side arms worn in the German manner. He was an enrolled member of the Irish Brigade which was "to land in Ireland to free Ireland from the English enemy, but," he said, "the inference will probably be drawn by you that it was intended that such men as could be seduced from their allegiance should form the first-fruits of a body which should be actually used for the purpose of raising armed insurrection in Ireland against the forces of the Crown, and of acting as a trained and instructed nucleus round which the disaffected section of the population might rally and grow."

Then he described the capture and scuttling of the *Aud*, and suggested that the connection between her appearance and the prisoner's movements was too obvious to require labouring. He described, too, the arrival of the party of which Casement was a member—that stealthy, mysterious arrival in the early hours—how Casement was taken while hiding in the dark in a Danish ruin, at four o'clock in the morning on Good Friday, a collapsible boat was found near Tralee by a farmer called Mc-Arthy; a dagger was lying in the boat, and a tin box containing

pistol ammunition was found in the sand; also three Mauser pistols, several foreign-made maps of Ireland, a flash lamp, a flag, two life-belts and three coats, in the pocket of one of which was found a railway ticket from Berlin to Wilhelmshaven dated April 12, 1916. McArthy then saw in the sand the footprints of three men. They started from the shore, made towards his house, and continued through his yard towards a stile which led to Ardfert.

Later the same morning at 5.15, three men, one of whom had been identified as Casement, were noticed by a farm worker called Mary Gorman, walking along the road in the direction of Ardfert. The police were told, and, after a careful search, found Casement hiding in an ancient Danish ruin called McKenna's Fort. When asked his name, he said that he was Richard Morton, and that he was an author. The officer quickly asked him what he had written. He replied, *The Life of St. Brendan*. He said that he had arrived in County Kerry from Dublin, that he had stayed the night at a farmhouse nearby, and that his intention was to go on to Tralee. Each of these statements was a lie.

The officers took Casement to the barracks in Ardfert. As he went, there fell from the pocket of his coat a paper which was picked up by a boy called Martin Collins, who was afterwards called to give evidence for the prosecution. It was found to be a code, and a few extracts from it will be sufficient to demonstrate its nature. "Await further instructions . . . await favourable opportunity . . . railway communications have been stopped . . . further ammunition is needed. . . . How many rifles will you send us? . . . please send ship to . . . send more explosives to . . . send a vessel if possible. . . ."

"We are now in a position to connect this landing, quite simply, quite clearly, quite inevitably, with the acts of seduction and the treasonable plans which were outlined in Germany. The Irish Brigade was to fight in Ireland. The prisoner attempts a landing with confederates and arms, and he carries a code which enables him to ask for another ship, for rifles and ammunition, for cannon and plenty of ammunition, and for more explosives."

At Ardfert Barracks Casement disclosed his true name.

"Such," concluded the Attorney-General, "is the case which the Crown guarantees to prove, and upon which the Crown relies, I have, I hope, outlined the facts without heat and without

feeling. Neither in my position would be proper, and fortunately neither is necessary. The prisoner, blinded by a hatred to this country, as malignant in character as it was sudden in origin, has played a desperate hazard. He has played it, and he has lost it. Today the forfeit is claimed."

The witnesses for the prosecution were then called. The first was Mr. John Tilley, C.B., Chief Clerk at the Foreign Office. He produced Casement's letter to Sir Edward Grey with a record of Casement's career. Then John Cole from the Paymaster's Office gave evidence on the prisoner's pension which, he said, was £421 13s. 4d., payable quarterly. Then began the examination of the Irish witnesses. Casement lounged back, suave and unconcerned, in a new suit. John Cronin, a former private soldier in the Royal Munster Fusiliers, described how the Irish prisoners were separated from the British prisoners and taken, on December 22, 1914, to the camp at Limburg. He told how Casement visited the camp dressed in civilian clothes, distributing papers called the *Gaelic American* and the *Continental Times*. On his first visit he addressed seventy or eighty of the prisoners together, and said, "Why live any longer in hunger and misery in this camp when you can better yourself by joining the Irish Brigade which I am going to form?" The Solicitor-General, examining Cronin, asked him at this point, "Did he say what this Irish Brigade was to do?"

"He said that, in the event of Germany winning a sea battle, he would land them in Ireland and Ireland would equip them."

"What were they to do in Ireland?"—"Free Ireland." "Did he say whom they were to fight against?"—"Against England."

A number of the Irish prisoners were examined and their accounts were found to hold together. Further evidence that emerged from the examination was that the bread rations of the prisoners who refused to join the Brigade were reduced from 750 grammes to 300, and mangolds were substituted for potatoes, and the statement was several times repeated that the Brigade would cross to Ireland after Germany had won a battle at sea. It was deposed by William Egan, of the Royal Irish Rifles, that Casement distributed pamphlets and a book called *Crimes against Ireland and How to Free Her*. John Neill, of the 18th Royal Irish, said that the prisoner had said that they were first to help the Turks and the Russians, then the Germans, against the British,

then shed their blood for Ireland. "Fifty men joined the Irish Brigade up to the time when I came away from Limburg. The treatment and food got very bad. We noticed there was a great difference in it from the first time we went to Limburg. We were well treated for a fortnight or near that. Then the food commenced to be reduced."

The last witness was Michael Hussy, who was examined by the Attorney-General. He was a farm labourer living at Curragharn. He remembered the night of the Thursday before Good Friday. He had been out to see a friend, and was coming home at about 9.30. He suddenly noticed a light out at sea, a red light, which burned for a few seconds, then disappeared. He stood for a while straining his eyes into the darkness, and next day he went down to the place. There he saw a deserted boat lying above the sandbanks above high water, and he recognised it as the boat which had been photographed.

The evidence for the prosecution was continued on the second day of the trial, Tuesday, June 27. It was a warm, gentle day, and the sunbeams poured into the court. The prosecution had come to the alleged landing of Casement in Ireland. McArthur, the melancholy Irish farmer, repeated the evidence he had already given in the police court, now under fire of cross-examination from Serjeant Sullivan. The profound religiousness of the Irish character was revealed by this man's description of how, on Good Friday morning, he had risen at two o'clock to go to a Holy Well to pray. He knelt by it in the dark for half an hour. Then he discovered the footprints. Mary Gorman, the farm servant, gave her evidence next. She was very self-possessed, but the mouths of the policemen twitched when with brown boots squeaking stridently she walked up to take the oath to "her Sovereign Lard the King". She told how she had been about at 4.30 on the morning of Good Friday, and had seen the three men walking from the sea in the direction of Ardfert. She spoke of a "tall" man. "Which is he?" she was asked. She swung round slowly until she was facing Casement.

The little boy, Martin Collins, showed perfect composure in the box. It was his hour, and he was dressed in a smart suit of green, and his hair was neatly parted. He told with relish how he had come upon Serjeant Hearne, and Constable Riley, and "a strange man" at McKenna's Fort. He recognised

Casement whom he had driven in his cart. "I was going to Tralee," he said, "and I stopped at the Fort again and Tom Doone went in and picked up the papers and gave them to me. Tom Doone," he explained, "is a boy who is younger than I am. He found the papers at the place where I saw the strange man brought out. This is the piece of paper I saw the prisoner drop."

The leading seaman of the *Bluebell*, an Admiralty diver, and constable after constable gave evidence, and the case for the Crown approached its end.

Then Serjeant Sullivan rose to quash the indictment. His arguments penetrated deeply into the bowels of the law. His case was that under the statute of Edward III, under which Casement was indicted, a man could not be indicted for treason *without* the realm, and that therefore the indictment disclosed no offence to the law. His argument occupied two hours: they dragged slowly by. Ancient statutes were quoted; Professor Morgan changed places with Mr. Artemus Jones; he was surrounded by large books and documents. He exchanged whispers with Serjeant Sullivan. Casement coughed and yawned; the women shuffled and consulted watches; the jury seemed to be sunk in uncomprehending torpor.

Professor Morgan continued the legal argument into the next day on the question of quashing the indictment, and conducted a long argument with the judges. The question at issue was the construction of the sentence in the Statute of Edward III, and whether the words "or elsewhere" govern the adhering to the King's enemies as well as the aid and comfort of the King's enemies.

After listening to the long argument to counsel the Lord Chief Justice ruled that they must construe the words of the ancient statute without reference to commas, but merely looking at the language. He had no hesitation in stating that, in his opinion, adhering to the enemy without the realm was treason at the Common Law. "I am of opinion", he concluded, "that the words 'or elsewhere' govern both the adhering to the King's enemies, and the aid and comfort of the King's enemies, and that it is an offence to adhere within the realm or without the realm to the King's enemies, by giving them aid and comfort without the realm." Thus the motion was refused.



Then the adjournment was taken, and after it Casement made a statement, denying that through him the prisoners' rations had been reduced or that he had ever advised Irishmen to fight against Turks or Russians. He spoke quietly and his voice and feelings were admirably disciplined.

Serjeant Sullivan rose to make his speech for the defence. The room was now very dark. He began to speak at 2.30. The gloom grew more profound, the wigs and gowns and the scarlet robes of the judges showed vaguely through it in a blur. It was hard to distinguish the shadowy figure that stood stooping slightly forward with a document held between clasped hands. The court listened in rapt attention; then came a pause in his argument, and he said: "I am sorry, my lord, but there seems to be a considerable downpour of rain in this part of the court." The Lord Chief Justice looked up to the high window through which a heavy rain was pouring, pattering on to books and papers. A laugh of relieved tension ran round the court, and in a moment the lights were turned on, and the window closed. Sullivan resumed his argument. "The essence of treason", he said, "is the evil mind that plans it. Therefore when you come to consider what is alleged against Sir Roger Casement, you will always have to ask for the purpose of ascertaining with regard to each act: What did Sir Roger Casement do that for? What was in his mind? What was his motive?" Sullivan argued that the inference could not be drawn from any of the speeches that Casement had made that he had asked the Irish Brigade to fight for any country but their own. He referred to the factions in Ireland that were mobilising in the years 1912-15 and urged that Casement's object was to use the Irish Brigade in connection with the Ulster Volunteer movement. Later, Sullivan was stopped by the Lord Chief Justice for introducing statements uncorroborated by evidence. He resumed, speaking with great passion and moments of melting appeal. After a while his voice lost its fire, it became heavy and lifeless, and he himself was deadly white. It was 4.30. He had been speaking without a break for two hours. He repeated himself several times; lost himself in the labyrinth of his sentences; the thread of argument and the vigour of speech were alike gone. Then he swayed to and fro, and said in a very pathetic, weak voice, "I'm sorry, my lord, but I feel I can't go on. I'm—

I'm . . ." then he sat down abruptly, exhausted. He had broken down. The Lord Chief Justice, melting in a second, said "Of course, we'll adjourn at once until tomorrow." The Attorney-General, who had been listening with unexpressive face, at once hurried over to Serjeant Sullivan with expressions of the friendliest sympathy. Sullivan sat with his head bowed on his hands. Then he left the court with the other counsel. Casement smiled and disappeared with his jailers.

On the fourth day of the trial, Thursday, June 29, Mr. Sullivan's interrupted speech was concluded by his junior, Mr. Artemus Jones.

Then the Attorney-General rose to make the closing speech for the Crown. It was a powerful and effective speech, less passionate and less eloquent than Sullivan's, but far more deadly in its effect upon the jury. He rose slowly from the centre of the court, and stood with bent shoulders, his hands playing with a piece of tape. He spoke quietly at first, but the resonant voice soon gathered force, and rang through the court. He kept his eyes continually on the jury and never looked at the prisoner. When he referred to him he jerked his thumb over his shoulder speaking of "that man" or "the prisoner".

Mr. Artemus Jones had insisted that the Crown case must be proved "up to the hilt" before the jury would be justified in returning a verdict of "Guilty". The Attorney-General accepted this duty and repeated it. The only important defence that had been constructed for the prisoner was that the Irish Brigade was not to be used to assist Germany in any way, but to intervene in Ireland at the end of the war in order to create an equilibrium against the strength of the volunteers of the North, which the prisoner considered excessive. In fact, according to the defence, the Brigade was to be used in Ireland to produce an equipoise in a purely domestic political situation.

The Crown, on the other hand, contended that on the outbreak of the most terrible war in the history of the world, Casement, who had served England without complaint or disloyalty for twenty years, went to the country of our principal enemy where he found captured soldiers of the King, whom he attempted to seduce from their allegiance in order to embrace an enterprise which was injurious to the country to which they owed that allegiance.

He then read a passage from Mr. Sullivan's defence, describing how the Home Rule Bill had been already on the Statute Book, when Nationalist Ireland saw armed forces massing in the North to resist it, urging that, as the military were insufficient to support the Home Rulers, they thought it necessary to stand to arms in the last resort to protect their constitutional freedom. The Attorney-General remarked: "Had the acts for which the prisoner stands arraigned been committed before the war took place, had they been committed at the time when the acts which he alleges on the part of the Ulster Volunteers were taking place, these words might have been a good defence or a bad defence, but they would at least have had great relevance. . . . But I remind you of this: that there had intervened one circumstance which had altered the whole face of Irish politics. It was that the greatest military power that the world has ever known, was trying to destroy this country, and trying to make an end of this Empire. Since these controversies arose, what honest citizen was thinking or talking of whether or not there might, at some future date, be resistance to Home Rule? From the moment that Germany made her tiger spring at the throat of Europe, I say from that moment, the past was the past in the eyes of every man who wished well to England. . . ."

Sullivan had admitted this vital fact himself. He had said, referring to Irish relations, "Faith has been kept, let us all thank Providence, for it enabled my countrymen in the service of Ireland to write their names on every battlefield in Europe."

"Yes, gentlemen, but how do these reflections help the prisoner?" asked the Attorney-General. "What was the quality of his acts?" He repeated the question which he had asked in his opening speech. Why had the prisoner gone to Germany at all? No answer had been afforded to that question. Why was it that, when this country was at war with Germany, Casement should have been moving freely about the enemy country and treated with such respect by the Germans? Why did he go to Germany? The answer had been given that he went there to find men strong enough to balance the Volunteers in the North of Ireland. Why did he go to Germany to find such men at such a moment? If he had sought them in Ireland, he would still have been within the

King's dominions. More suggestive still was the treatment given him by the German Government. He pitilessly ridiculed the idea that the Germans would take such a keen interest in and show unlimited hospitality to a group of foreign prisoners, and spend so much money on an expedition simply designed to adjust a question of domestic politics in another country.

The question of the sea battle was another Achilles' heel in the defence. This, in his view, did not necessarily mean the end of the war as Mr. Sullivan had urged. It was more likely to mean that the moment that a naval victory had given Germany temporary control of the sea, the invasion was to be undertaken—an invasion to fight against England, not against Volunteers in Ulster at the end of the war. The witness, O'Brien, had represented Casement as saying that if they were successful in winning the war they would land the Irish Brigade along with the German army in Ireland. "Mark that: along with the German army. Does that look very much as if the invasion was to be at the end of the war?"

Ranging over the whole evidence, he asked what had become of the defence. There was not one witness whose evidence suggested that all the Brigade was to do was to oppose the Volunteers. "What he was asking them was this: if Germany gained a naval success, in other words, if Germany acquired the facilities for landing troops in Ireland, are you prepared to go and fight in Ireland against England?"

The Lord Chief Justice had, earlier in the case, explained the direction he was going to give the jury on the question of law as to the interpretation of the words "aiding and comforting". He had construed them as meaning any action which strengthened the enemy for the purpose of his struggle with this country, or which weakened this country for the purpose of its struggle with the enemy.

The Attorney-General invited the jury to apply this key to the present question of Casement's actions. Would it not have strengthened Germany if, when a naval victory had given her control over the seas, she had been able to land German and Irish soldiers in Ireland, and would not England have been correspondingly weakened? The most damning evidence in the case was the code which had dropped from Casement's pocket. According to the defence, Casement had gone to

Ireland, not contemplating any action there until the war should be over. He came as the mediator in the domestic disputes of his own country. It was then found that he had on him an object which he was most anxious to conceal—an arranged code between himself and the Germans. If, as his counsel said, his concern had been with the Volunteers of the North, he could have no conceivable reason for arranging a code with Germany.

“What”, the Attorney-General asked, “had the Germans to do with a landing made *pendente bello*, if there were any basis and substance in the only case that has been put before you? Casement’s code was concerned entirely with hostile landings.” He concluded a speech which had made a powerful impression on the jury: “You have a duty to discharge as serious, and in many ways, as testing as the duties which are discharged by other men serving the State in these bloody and critical days. If you should come to the conclusion that the Crown has proved its case, however painful the duty, it is one from which you cannot, and you dare not shrink.” He flung his last words at the jury: “I have discharged my responsibility in this case. Do you discharge yours.”

The Lord Chief Justice gave a masterly summing up which lasted two hours: then the jury withdrew at 2.53. Specimens from the evidence were sent in to assist their deliberations. At 3.48 they re-entered the court. In breathless silence their names were called over, and the foreman returned a verdict of “Guilty”.

Casement was asked if he had anything to say for himself why the court should not pass sentence of death. He produced a thick document, and began to read his last speech. The case seemed suddenly to have achieved the issue of a personal collision. It seemed to have contracted to a single antagonism between the prisoner and the Attorney-General; between the prisoner who had mortgaged his life in the interests of a distorted patriotism, and the Attorney-General whose political life had been largely devoted to disputing the Irish claim.

Yet, standing there, dressed in unrelieved black, with husky voice, and the paper shaking in his hands, Casement could not hold the attention of the court. Although he was

speaking under the shadow of the gallows, he could awaken no echo of sympathy. He was the advocate of an exhausted cause; he was stirring the memories of a vanished bitterness. Irish Nationalism, that poignant issue for which O'Connell and Parnell had spent their brilliant resources, that theme which had given birth to deathless feuds, divided a parliamentary party, sundered warm friendships and flamed into bloody insurrections, had for the moment been submerged in a more vital issue, now that Europe was rocking in the convulsions of the Great War.

For the first time the Attorney-General turned and looked the prisoner in the face. Then he lounged back, hands clasped behind his head, eyes closed. He seemed to have retreated into the pavilion of his own thoughts. Casement addressed himself to the Attorney-General. He essayed laboured sarcasms, made deep ironic bows, and forced a ghastly smile. It was a terrible sight. There were little soft shuffles of impatience in court. People watched the paper in the trembling hands, and wondered how many more pages remained to be turned. Yet Casement's last words were woven into rare beauty and pathos, and their richness and passion are hardly less moving than that last speech of Strafford three centuries ago.

"It is not necessary", he said, "to climb the painful stairs of Irish history, that treadmill of a nation whose labours are as vain for her own uplifting as the convict's are for his redemption. . . . Home Rule, when it comes, if come it does, will find an Ireland drained of all that is vital to its very existence, unless it be that unquenchable hope that we build on the graves of the dead. We are told that if Irishmen go by the thousand to die, not for Ireland, but for Flanders, for Belgium, for a patch of sand on the deserts of Mesopotamia, or a rocky trench on the heights of Gallipoli, they are winning self-government for Ireland; but if they dare lay down their lives on their native soil, if they even dare to dream that freedom can be won at home, and by men resolved to fight for it there, then they are traitors to their country, and their dreams and their deaths alike are phases of a dishonourable phantasy. . . . If loyalty is something less than love, and more than law, then we have had enough of such loyalty for Ireland or Irishmen. If we are to be indicted as criminals, shot as mur-

derers, to be imprisoned as convicts because our offence is that we love Ireland more than we value our lives, then I know not what virtue resides in offers of self-government held out to brave men on such terms.

“ Self-government is our right, a thing no more to be doled out to us, or withheld from us than the right to life itself, the right to feel the sun and smell the flowers, and love our kind. . . . If it is treason to fight against such an unnatural fate as this, then I am proud to be a rebel and shall cling to my rebellion with the last drop of my blood. When all your rights become only an accumulated wrong, when men must beg with bated breath for leave to subsist in their own land, to think their own thoughts, sing their own songs, garner the fruits of their own labours—and even while they beg, to see things inexorably withdrawn from them, then surely it is a saner and a truer thing to be a rebel in act and deed against such circumstances as these, than tamely to accept it as the natural lot of men. . . . ”

Then suddenly from behind, three black caps were placed upon the judges' heads, like lop-sided extinguishers on three candles on a high altar. Each was set at a different angle : one over the eyes, another cocked on one side. Then in profound silence, the Lord Chief Justice sentenced Sir Roger David Casement to death.

Casement's counsel appealed to the Court of Criminal Appeal on July 17 and 18, on the technical point which they had raised in regard to the construction of the Statute of Edward III, but they were again overruled by Mr. Justice Darling, presiding over a Court of five judges. The Court did not feel it necessary to call upon the Attorney-General to reply to defendant's counsel. It now rested with the Home Secretary to decide whether the Crown might be advised to commute the capital sentence. We know from the biography of Lord Oxford and Asquith that the Cabinet were anxious to reprieve Casement on the ground of insanity, but could not find an alienist of real authority who would certify that the prisoner was mad. Accordingly the law took its course and Casement was hanged on August 3, 1916. It remains to be said that Serjeant Sullivan and his Irish colleague privately thanked F. E. Smith for his helpful courtesies to them throughout a most difficult and

delicate case. They recognised that he had done all that was possible to prevent them from being handicapped by their unfamiliarity with English legal practice, and they assured him that the prisoner himself acknowledged that he had had a fair trial.



## V

## LAW OFFICER (1916-17)

THE fall of Mr. Asquith's Coalition Ministry in December 1916 may be briefly dismissed, for F. E. Smith had little or no part in bringing it about. Lord Beaverbrook, who has given a full account of the episode, declares that F. E. objected to the anti-Asquith agitation in November 1916 on the ground that it was dangerous to the public interest. Lord Beaverbrook says that when he expressed the view that Asquith's resignation would not affect the Attorney-General, F. E. Smith was much annoyed. It was characteristic of him to be faithful to a friend, whatsoever he might think in his heart of the friend's capacity. Clearly Mr. Lloyd George, who accepted office on December 7, 1916, on Mr. Bonar Law's failure to form a Cabinet, thought none the worse of F. E. Smith for his fidelity. In the Second Coalition Ministry, dominated by the War Cabinet of five members, F. E. Smith was reappointed Attorney-General.

In the early days of 1917 at the critical period of the war, when to many who have since not hesitated to revile him, Mr. Lloyd George seemed to stand alone between this country's freedom and a German military occupation, several people were arrested for plotting the death of the Prime Minister and members of his Cabinet. The country was amazed and indignant. By 1917 the whole of England was so united in a determination to fight Germany to the death, that it seemed inconceivable that obscure people of whom he had never heard could have seriously meant to murder the man who was the emblem of her resistance. There were indeed conscientious objectors and Communists distributed about the country in their rather contemptible cliques, but their shrill voices were silenced in the clamour of war, and their influence, although mischievous, was trivial. They preached pacifism, and resisted the Military

Service Acts, but their influence had before been purely negative. In this case, it was found that the conspirators had no guidance or encouragement from the Germans: it is unlikely that they even paused to consider what effect the success of their plot would have upon the complexion of the war.

Their object was never apparent. It seems that they had conceived in their illogical minds a loathing for the Prime Minister, devoid of all reason or understanding. They were opposed to him root and branch, and wanted his death. All the conspirators were sane, and they seem to have nourished a ridiculous hope that if Mr. Lloyd George were put out of the way his successor could be intimidated into abolishing conscription. This, at such a moment, gives a fair indication of their intelligence.

At this time the government agents were particularly active in the watch they kept over Communist centres. Many Communists had avoided conscription by pretending to be genuine conscientious objectors, and added another aspect to their mischief by skulking under the mantle of pacifism.

The easiest way for the government agents to learn about these people's activities was to go amongst them, and obtain their confidence. There was, at the end of 1916, a government agent using these methods, called Alec Gordon. He was pretending to be a conscientious objector, and as such he met a Mrs. Wheeldon, who was the proprietress of an old-clothes store in Derby. Conscientious objection was in the Wheeldon family blood; one of her sons was an objector: her blue-stocking daughter of twenty-seven was a teacher at one of the local schools; she shared family opinions on politics. Lastly, there was a younger daughter called Winnie, who was married to a chemist called Alfred George Mason. The couple lived together at Southampton. They were also conscientious objectors.

Gordon soon became *persona grata* in the house and obtained Mrs. Wheeldon's complete confidence. She began to throw out dark and suggestive hints about some "service for which an instrument was required". Gordon became alert: he consulted his superior in the service, Herbert Booth, whom he brought into the investigation, because he shrank from the whole responsibility. Booth had in his earlier life been clerk

to a famous member of the criminal Bar, and was experienced in the criminal mind. Booth went to Derby on December 27, 1916. He was introduced to the Wheeldons by Gordon, who with a shrug and a look indicated that Booth was a far more desperate man than himself. Booth sustained the pose well: his rôle was that of a deserter who was trying to escape arrest and death, and whose spare time was devoted to the fostering of a Communist body called the International Workers of the World.

He soon gained the complete trust of the Wheeldon family. They saw in him the very instrument for their purpose. They scarcely knew themselves what that purpose was, but believed that they were destined to usher in a new millennium. Their actions sprang from impulses rather than principles. They were a familiar and rather odious type—first the extremest and most foolish of suffragettes, then violent pacifists. Mr. Lloyd George and his Ministers were prosecuting the war with vigour; therefore, thought Mrs. Wheeldon from her villa in Derby, they must be removed. Any Communist, any fugitive from active service, any hater of the established order could count on hospitality at the Wheeldon home.

Mrs. Wheeldon lost no time in confiding in Booth. He heard enough to obtain an order to search the family correspondence. The damaging letters were those that passed between Mrs. Wheeldon and Mr. and Mrs. Mason. They were written in code, but were quickly solved by the English Intelligence Department. The code was constructed round the key phrase: "We'll hang Lloyd George on a sour apple tree," a *motif* which made the Wheeldons' purpose all too clear. Alfred Mason was expert in chemistry and drugs, and the letters addressed to him made it clear to Booth that poison was required for some illegal and sinister purpose, and that it was to come from Mason. Mrs. Wheeldon grew so fond of Booth that she regaled him with an account of one of her earlier coups, the burning of Breadsall Church, an arson which at the time had remained a mystery. "We were very nearly copped," she explained, "but we bloody well beat them."

The third meeting was called at the beginning of January 1917. Mrs. Wheeldon spoke of attempted murder by suffragettes—how they had spent a large sum to provide a boot

with a poisoned nail, to assassinate Mr. Lloyd George, and had contemplated sending to Mr. McKenna a skull with a poisoned needle in it. Booth all the time was eagerly waiting for the parcel from Mason. Mrs. Wheeldon also waited eagerly, and indeed anxiously, for, as she naïvely observed, "it had all the incriminating evidence in it." It arrived on January 4, 1917. Mason did not send it direct to Mrs. Wheeldon, but to one of her relations who also lived in Derby and was neither a Communist nor a pacifist. The parcel contained a phial of strychnine, strong enough to kill fifteen men, a phial of solution of strychnine, and a phial of curari, the deadly poison used by natives on their arrow-tips. The difficulty in poisoning with strychnine is to get the victim to swallow it in some form: curari, on the other hand, is fatal once it is introduced into the blood-stream. Mason was an expert on curari, and was known to have a quantity of the poison in his possession.

The authorities now judged it the moment to intervene. All through his association with the Wheeldons, Booth had been collecting evidence against them: this was now in the hands of the authorities. Sir Frederick Smith, as Attorney, advised a prosecution. The decision caused him some anxiety. It was connected with politics; if the prosecution had been begun, and had collapsed, there would have followed a great new disaster—loss of prestige. A law officer should never run the risk of the humiliating collapse of a prosecution, yet it is even more dangerous not to act when serious crime is being contemplated. In this case the conspirators were perfectly serious in their intentions: all they required was an assassin to do their dirty work for them. When he came to hand the attempt would be made.

The four were arrested and committed for trial. They were fairly treated, were not tried at Assizes, but brought to London. The trial took place at the Old Bailey before Mr. Justice Low on March 6, 1917. The four were arraigned on charges of conspiring to murder, and of inciting Booth to commit murder. All four pleaded not guilty.

Sir Frederick Smith led Mr. Hugo Young, K.C., Mr. Bodkin and Mr. Maddocks for the prosecution: the accused were defended by Mr. Riza. Riza took a bold and skilful line of defence. He suggested that the stories of Booth and Gordon

were fabrications which had been planted on the defendants. Their dislike of Mr. Lloyd George, said Riza, was well known ; that helped to make the accusation plausible. He tried to explain away their movements : their work was simply to help conscientious objectors under detention, and the poison was intended for the police dogs who guarded them. Gordon was not called, for Booth, not he, was the material witness. A great deal was made of this : his status was freely questioned and one suggestion made was that he was Steinie Morrison, the convicted murderer.

Riza had a difficult task. There were no police dogs used. The Crown called conclusive evidence to prove this. Nor was it even possible that the defendants could have imagined that they were being used. Dealing as they did with hundreds of conscientious objectors, they were perfectly well aware of the precautions that were taken to secure them. No witnesses were even called by the defence to say that they had told the Wheeldons, on inquiry, about the dogs. The dogs were a complete invention. Again, even supposing that there had been dogs to dispose of, the poisons procured were the last to despatch an animal silently and quickly. The directions for use meant nothing when applied to the poisoning of dogs. They meant everything if applied to the poisoning of a human being. If these explanations were rejected, the only line of defence that remained was that Booth was lying in the box on oath. He was put through a severe cross-examination by Riza, who tried to make out that he was perjuring himself, and that his earlier employment as a barrister's clerk had made him an expert in false evidence. Booth met the cross-examination with composure.

The Crown witnesses impressed and convinced the jury, and they convicted Mrs. Wheeldon and the Masons. Hetty Wheeldon, the elder daughter, was acquitted, and died not long after. Mrs. Wheeldon was sentenced to ten years penal servitude, Mason to seven years, and Mrs. Mason to five years.

It was about this time that the Attorney-General, always a picturesque figure from the journalists' standpoint, attracted wide publicity by one of those acts of spontaneous generosity which his friends knew to be characteristic of the man. The

Russian revolution had excited immense enthusiasm among the Radicals and Socialists, who did not foresee its sinister outcome. The Trade Union Congress hastened to send a delegation to congratulate the new Russian régime, and nominated, among others, Mr. Will Thorne. Strolling one day down Whitehall, Mr. Thorne met the Attorney-General, resplendent in a big fur coat, for the weather was cold. In reply to the Attorney's congratulations on his coming adventure, Mr. Thorne, looking longingly at the luxurious garment, said: "Ah! I wish I had a coat like yours." "So you shall," said the Attorney, and, bettering the example of St. Martin, who only divided his cloak between two mendicants, pulled off his fur coat and insisted that Mr. Thorne should put it on there and then. The incident serves to illustrate that bonhomie by which, when he chose, F. E. Smith could capture the hearts of men of all classes, and which accounted for his profound hold on the sympathies of the great public, irrespective of politics.

During the session of 1917, it happened that the Attorney-General, despite the ever-increasing burden of his legal duties, was compelled to take an active part in political debate. The principal measure of the session was the Representation of the People Bill, which was the outcome of the Speaker's Conference, appointed in 1916 and composed of unofficial members of all parties. The Conference had been unanimous on all questions except Woman Suffrage, which it recommended by a majority. F. E. Smith's view was that its report on electoral reform must be accepted as a whole.

The Conference recommended Proportional Representation for certain large towns, and F. E. Smith strongly supported this suggestion, to which the majority was adverse. He stated his case well in the debate on Proportional Representation on June 12, 1917, stressing very frankly the case of Liverpool, where the Liberals were always under-represented, but he was defeated by a narrow majority of eight votes. An attempt to reverse the decision was made on July 4, 1917. F. E. Smith again strongly supported Proportional Representation. Edwin Montagu, then Financial Secretary to the Treasury, had argued that Proportional Representation must be undesirable, as leading to weak governments, for if it had been in operation in January 1906 the vast Liberal majority would have shrunk to

a mere 38. F. E. Smith made great play with this admission by Montagu which, of course, disposed of the alleged moral right of the Liberals in 1906 to do anything they pleased. He concluded with a magnificent and prescient passage :

“ Many of my honourable friends, who I think confine their attention a little too closely to a phase of politics which I believe to be absolutely extinct, are wondering whether the arrangements which will follow upon this Bill are in the interests of the Unionist Party. I greatly doubt whether those who entertain these apprehensions have realised the nature of the resolution which is involved in this Bill. I say plainly as one who is prepared to support this Bill, that I am sure that nothing in our politics will ever be the same when once this Bill has become law. Those who are attempting to trim their sails to the winds which died three years ago and will never revive, had better consider the new and real problems of the future, and the party which for many years had justly claimed to have been the party which has stood for the defence of the cause of stability would do well to weigh once, and yet again, the strange seas in which we are to voyage when this war is concluded. There were great reactions after the South African war. Who can measure the reactions which will follow upon the conclusion of this peace? There will be revelations of incompetence, not only in this country, but in every belligerent country. There will be sufferings. There will be immense war indebtedness to be paid, and any man who supposes that elections are going to take place under the old conditions, and with the old controversies between the two parties, is mad. New issues, new controversies, new parties, are going to determine the future, and I say to those who heretofore in this House have defended the cause of stability, and who think themselves concerned in the future to establish and maintain the centre of gravity of the State, your one chance of salvation is to establish an exact equipoise in the State between the strength of the constituencies and the strength of the House of Commons, and the degree in which you succeed in that object will be the measure of your success in maintaining those causes which minorities will always defend.”

Proportional Representation was, however, again rejected by 169 to 201.

On the Report stage, November 22, 1917, F. E. Smith returned to the charge, and, on the question whether Proportional Representation was practicable, said that it should be given a trial. He spoke of the derision which had greeted

Willett's Daylight Saving Bill before the war: "If we accept the limited scheme of Proportional Representation, it is for practical reasons. We should, of course, like a full scheme. Cannot the English understand it? The Swedish peasants can and do." F. E. Smith evidently felt sincerely on this subject, but his persuasions were of no avail and the proposal was dropped, despite the attempt of the Lords to reintroduce Proportional Representation into the Bill.

Again on the question of Woman Suffrage, which he had been prominent in opposing before the war, he now made his position clear. On June 19, 1917, Sir F. (afterwards Lord) Banbury, in opposing the Woman Suffrage proposals of the Bill, which gave the vote to women over 30 years of age, had quoted F. E.'s speech of July 11, 1910, and had suggested that he was now a convert. Smith replied at length.

"It is not true", he said, "that I am a convert, but with the experience of the war I should modify my argument as to force being in the last resort the decisive argument, so that a woman cannot fulfil the whole duties of citizenship. But you must either accept the Report of the Speaker's Conference as a whole, or reject it. There is no middle course, and it is worth while to get a settlement that would secure some degree of leisure for the House of Commons to devote to post-war problems. Moreover, I know that opposition to Woman's Suffrage will be useless, but if the Bill breaks down I must reserve my liberty as to Woman's Suffrage."

In the summer the Attorney-General was put in charge of the Corn Production Bill, which had been rendered necessary by the German U-Boat campaign against our merchant shipping. Until the Admiralty was induced to adopt the convoy system, our losses in ships went on mounting up, month by month, to an appalling degree, and the danger lest food should run short was imminent and alarming. The Bill gave the Government power to fix minimum prices for wheat and oats, and minimum wages for farm workers, and to compel farmers to cultivate their holdings efficiently. The Attorney-General put the case for the Bill succinctly and with a flash of the old humour in Committee on July 10, when he said:

"I am one of the few who have attempted to take part in this debate wholly uncontaminated by any expert knowledge of agriculture. The late Government (of which I was a Cabinet member)", he added,



“wholly underestimated the damage to be done by the U-boats. We know better now, and so we make these proposals.”

The Attorney-General had an unpleasant task two days later in connection with the Mesopotamia Commission, which had unfortunately been appointed as the outcome of public indignation at the breakdown of the medical and transport service on the Tigris during the operations for the relief of Kut. The Commissioners had felt themselves bound to pass severe criticisms on the Indian Government departments which were responsible for the care and transport of the wounded. This had the unforeseen consequence that Mr. (now Sir) Austen Chamberlain, Secretary of State for India, felt himself obliged to resign his office on July 11, because the services thus publicly impugned were nominally under his control. The War Cabinet, obviously regretting that the Commission had ever been set up and yet, feeling that its Report did less than justice to the officials and officers who were criticised, had decided to hold a judicial inquiry into the conduct of these individuals. When the matter was debated in the House of Commons on July 12, 1917, it fell to the Attorney-General to explain and defend the Cabinet's proposal against much angry and technical criticism. He contended very reasonably that the Commission's findings were most unsatisfactory from the judicial standpoint and argued for an inquiry under the Indian statute, known as the Barrett Act. Sir John Simon, for the Liberal party, took exception to this, and the Attorney-General ultimately agreed that there should be a new tribunal, set up by statute, to deal with the cases of the censured officers. Mr. Asquith broke into this legal disputation with the reminder that, after all, the country was at war, and his repetition of Burke's famous phrase on a similar occasion, “Let us pass on, for God's sake, let us pass on”, was echoed with general approval. Mr. Lloyd George seized the opportunity to admit that the whole discussion was irrelevant and, a few days later, the Prime Minister let it be known, to the general relief, that the whole idea of further inquiry would be shelved. The Cabinet absolutely refused to hear of Lord Hardinge, the Viceroy, resigning, and thus the Mesopotamia Commission, which should never have been set up, ceased any longer to divert energy from the prosecution of the war.

In November 1917 the Attorney-General took charge of the Air Force Bill which reorganised the service very much on its present footing. In the debate of November 12, on the second reading, he had a sharp encounter with Mr. Pemberton Billing, who had gained a transient notoriety by his bitter criticism of the Air Force administration for supplying our pilots with dangerously inefficient machines, and had won a by-election at the Conservative stronghold of Hertford on that issue. F. E. Smith did not mince his words in dealing with the popular idol of a day.

The Attorney-General became Treasurer of Gray's Inn for the first time, for the year opening on November 22, 1917, and he took advantage of his promotion to entertain the Prime Minister at a banquet in the Inn on December 14. It was a historic occasion, for Mr. Lloyd George took the opportunity of replying very definitely to the letter, published in the *Daily Telegraph* of a fortnight earlier, in which Lord Lansdowne pleaded for a peace by negotiation. The Prime Minister would have none of it. If Lord Lansdowne meant to say the same as President Wilson, Mr. Lloyd George asked, why did he not do so? The Prime Minister in a memorable sentence warned the nation against the man who thought there was a half-way house between defeat and victory. F. E. Smith was of the same mind as his chief.

His services through a laborious and critical year were rewarded, in the New Year Honours list issued at Christmas 1917, by his elevation to a baronetcy. The new Baronet, at the moment, was far away from home.

## VI

### *A FIRST TOUR IN AMERICA (1917-18)*

**F**. E. SMITH had arranged to spend the Christmas of 1917 with his family at Blenheim, when he was suddenly asked by Sir Edward Carson to go to the United States for six weeks or two months, because it was thought that a British Minister should visit the United States and Canada at this moment. Smith went to interview the Prime Minister in the House of Commons, and the arrangement was made. The additional motive behind the journey was threefold: the adjustment of various legal matters which had long been a subject of correspondence between the Attorney-General and his American colleagues; he had been invited with Colonel Roosevelt to make the annual address at the Ohio Society banquet in New York, and he was also to deliver the annual address to the New York Bar Association. F. E. Smith, accompanied by two secretaries, his brother and Colonel Merewether, left Euston at 5.30 p.m. on Monday, December 17, 1917. It was a whirlwind tour. He met and conferred with many of the leading men of America. He travelled 15,000 miles in two months, from Liverpool to Liverpool. He addressed in that period forty-eight meetings, never less than three, and sometimes five a day. Altogether he spoke to 100,000 people.

He described the incidents of the tour vividly in his diaries, beginning with the voyage from Liverpool with the stately convoy of destroyers and the airships floating above the ship and glittering in the sun. Immediately on arrival the interviews and speeches began. They were enlivened by lunches and suppers. He saw Elsie Janis in "Lord and Lady Algy", found her "better than in any other rôle", and took her and her mother to supper. He took lovely Maxine Elliot to the Coconut Grove, where they watched the Spanish dancing. He visited President Wilson. A flunkey drew him aside and whispered

that it was usual to back out of the Presidential presence. Smith replied furiously that he would not back out of the presence of the Mikado. He was ushered in, and the two men, so utterly opposite in temperament and outlook, confronted each other for the first time. At the time it was necessary for F. E. Smith to veil his impression of Wilson in smooth and diplomatic phrases. Secretly he mistrusted Wilson, and distrusted even more his facility for abstract thought; but he remembered the formidable difficulties which confronted the head of a nation so vast and so heterogeneous, and the noble speeches made during the war with their powerful impact on every democracy in Europe.

He began to speak on matters of high politics. Wilson refused to depart from the trivial, and put aside serious questions with bland and irritating assurance. The hopeless dialogue continued for some time. F. E. Smith became more and more annoyed. Wilson spoke at great length about Oxford. F. E. Smith tried to return to the subject of the war. Wilson turned him suavely aside: "And what, Attorney-General," he said, "would you consider on the whole to be the tendency of the modern undergraduate?" "Women and drink, Mr. President!" was the exasperated reply.

As usual, he was unexhausted by the ardours of the tour. Here is a typical day. He arrived at St. Louis at 8.0 a.m., visited the courts, and listened from the Bench to a naturalisation case, took part in an improvised picnic of lawyers and judges in a "fleet of motors" to the "Log Cabin Club"; played golf over links deep in snow; went to the County Club, whose members boast that they possess the greatest artist in the United States in the manufacture of cocktails; was entertained to dinner by the Bar Association and spoke for forty-five minutes, afterwards shaking hands with all the guests, and ended the day in the following manner: "We stayed talking and saying 'Goodbye' until 11.30. Fordyer, who is the kindest of men, observing with justice that it was always too early to go to bed, took us in a motor-car to Mr. and Mrs. Kaufmann's, where we played bridge till 2.30," and so to sleep.

An extract from his address to the Ohio Society, New York, will show the characteristics of the speeches he made at this time. He was speaking of the contribution to the war made by the British Empire.

“When the great menace disclosed itself, what had we to oppose it? If we took the desperate choice, we were in a position to place at once in France eighty thousand men. The fateful decision which my country took almost in an hour was this—she would send those eighty thousand men, containing her whole scientific staff of officers, instead of keeping them back as a centre and guide for those vast armies which even then we were determined to create. In the first week of war, with all our anxieties for our own future, and while men still talked of invasion, we sent all we had. And through failures and disasters by successive stages we have at last got five and a half million British soldiers trained in the art of war. These amateurs can meet and defeat the best and most scientifically trained armies in the world. . . . You are going to travel the same road.”

One of the objects of Smith's tour was to meet the American lawyers, and he was accompanied on his tour by Mr. John W. Davis, Solicitor-General of the United States. Smith delivered a great address to the lawyers of New York, which ended with strong appeals for the assistance of America in finishing the war. A *Times* correspondent thus describes the moving scene at a gathering in Chicago :

“Sir Frederick Smith, the Attorney-General, travelling with Mr. John W. Davis, Solicitor-General of the United States, arrived at Chicago on Monday. The train was one of the few which reached the city, others failing to arrive owing to the blizzard. Every evening newspaper announced that the city would be visited by another storm at any moment, and warned the public against leaving their homes.

“In spite of these depressing circumstances, the Attorney-General held two remarkable meetings. All the judges closed their courts half an hour earlier than usual, and six hundred lawyers attended a reception given in the afternoon. The Attorney-General addressed them for forty-five minutes. Great enthusiasm prevailed. In the evening an audience numbering six thousand packed the *Medinah Temple*. Mr. Samuel Insull was in the chair. The Attorney-General spoke for an hour. Towards the end, when he was speaking of the unity and friendship of the two countries, and all it stood for, the United States Solicitor-General leaped to his feet, and seized the Attorney-General's hand. The audience mounted on chairs, and the cheering lasted many minutes.”

F. E. Smith ran into trouble with the Irish Americans, who were passionately interested in the pre-war Home Rule controversy,

and had closely followed every movement in the battle. They knew, of course, the part which Smith had played in the anti-Home Rule fight, and were bitterly hostile to him, particularly on account of the prosecution of Roger Casement. An interview was published during his visit in which he was represented as having said: "You will remember that a tremendous effort was made to save Casement, and for a time the Government was wobbling. I gave them the choice of Casement or myself. Nothing has ever given me greater delight than the execution of Casement."

The account of the interview was clearly false. F. E. Smith was far too subtle to make such a disastrous surrender to his private opinions, and when he arrived in London he took the first opportunity of contradicting it, explaining that a three-column story had been built upon a five-minute interview.

The tour was so rapid that on Smith's return his enemies began to whisper that he had been recalled for unsuitable comments at the expense of President Wilson. This was, of course, completely untrue. Questions were also asked in Parliament about his speeches, and the propriety of taking his brother, Harold Smith, with him. Doubts were freely expressed when F. E. Smith was in the States, as to whether the tour was of any practical advantage, but Mr. Myron T. Herrick cabled that the visit was entirely successful, and that Smith was presenting vividly the sacrifices that his country was making in the war. Other messages followed this, and his critics were reduced to silence. The British Ambassador at Washington, Sir Cecil Spring-Rice, received many messages of appreciation. Mr. Meredith, the British Vice-Consul at Detroit wrote:

"I desire as Vice-Consul in the city of Detroit to inform your Excellency of the unusual and extraordinary enthusiasm attending the meetings addressed by Sir Frederick Smith. His speeches have created a great impression, and aroused the enthusiasm of the city. I have the honour of informing your Excellency that one of the meetings at which the attendance exceeded 2,000, was concluded by singing 'God Save the King'."

F. E. Smith had also produced a most favourable impression in Canada, in particular by a speech made to the Canadian Club, Montreal. Mr. William Taylor wrote to him . . .

"I might mention that your visit to Montreal made a greater stir before and after than that of almost anyone we have had here since

the outbreak of war. . . . We have heard no more perfect Parliamentary address in this country in my recollection, which goes back many a day, than that delivered by you to the Canadian Club at Windsor Hall, and that is the very general opinion. . . .”

It may be added that when Lord Reading shortly afterwards went as Ambassador to Washington, he made it his business to inquire into the hostile rumours about F. E. Smith’s mission. He found that they were wholly unfounded.

“Since my arrival,” he wrote, “I have everywhere heard most complimentary references to his addresses, which served to consolidate best relations between the United States and ourselves. Both in the United States and Canada he aroused great enthusiasm by his expositions of the causes and aims of the War.”

If he had discussed with his usual candour the early and tentative suggestions, put forward on both sides of the Atlantic, for a League of Nations, he had assuredly not done so in any unfriendly spirit. He was solely anxious to insist that the war had yet to be won.

F. E. Smith reached Liverpool on his return from this whirlwind mission on February 18, 1918. He lost no time in publishing a compact account of the tour in a series of newspaper articles which were reprinted in a volume, *My American Visit*, in the April following. Almost simultaneously there appeared the elaborate war history of *The Indian Corps in France*, in which he collaborated with Lieut.-Colonel J. W. B. Merewether, C.I.E., of the Indian Army, who had succeeded him as “Observer” to the Indian Corps.

## VII

### *THE RHODESIAN LAND CASE (1918)*

IN 1918 Smith took the leading part as Attorney-General in a case which was referred to the Judicial Committee of the Privy Council, and which involved the most important questions of Colonial expansion. A dispute had arisen as to the ownership of the unoccupied lands in Southern Rhodesia. These vast tracts of land, capable of immense development and yield, had not been assigned to the natives or bestowed upon any trading company, or upon any settlers. Climatically the land was suitable for permanent settlement by white people. The question of ownership was therefore most important. There were four claimants.

First, the British South Africa Company claimed ownership over the enormous area. The natives made a similar claim: the white settlers maintained that the lands were the heritage of the community of Rhodesia. The Crown contended that they belonged to the King, in his public capacity as head of the State.

To understand the case a brief review is necessary of Southern Rhodesian history. It was a problem of difficulty because there was no sovereign after 1894 to whom the ownership of the land could be definitely attributed, and no clear title to it could be produced by any claimant. Rhodesia was a Protectorate, and, technically speaking, was not within the Empire, or part of the King's Dominions. The principle had to be applied outside these dominions that the King was the ultimate owner of all lands within his realms. The position was further complicated by the disappearance of all native sovereigns after Lobengula's defeat.

This was the course of events. Southern Rhodesia was in 1890 under the rule of a native sovereign called Lobengula. It was divided into Matabeleland and Mashonaland. It was a rather



primitive agricultural economy. The tribes pastured their cattle and hunted and made war. The Matabele people were of robust Zulu stock, and were the most powerful tribe. The others were subject to them, and frequently disturbed by them. The King was the owner of all the cattle and was expected to consult the local chiefs on matters of moment. Actually, no doubt, such rulers as Lobengula were complete autocrats. The possibility of land-ownership seems never to have occurred to the native mind. Consequently there was no hint of even the most rudimentary land law.

When the division of Africa began there were three possible claimants to the disputed lands: the British Empire, Portugal, and the Boers of the Transvaal. By 1890 concession hunters were thronging Lobengula's Kraal. His respect for Europeans rapidly declined. The authorities at home saw the trouble that was likely to arise from this medley of suitors, and became alarmed. With the dual object of preventing disorder and stabilising British influence in Lobengula's dominions, the British South Africa Company was formed and incorporated in October 1889. Its objects were to exploit the undeveloped territorial and mineral wealth of the country, and to control the Europeans to whom the native law did not apply. Orderly government was essential to the development of the mineral and agricultural resources of the land: capital and European science were equally necessary. The mischievous activities of the concession hunters had to be curbed, and the relations of black and white peacefully adjusted. The South Africa Company was made the instrument of this change. It was no new conception. Our dominions in India had grown up under a similar dualism of control, under a mercantile body which yet performed wide administrative functions.

The Company's task began in 1890. It acquired two concessions, the Rudd concession and the Lippert concession. The Rudd concession gave the right to prospect for minerals, the Lippert the right to grant land in the name of King Lobengula. This latter concession was granted in 1891. It was vitally necessary to the Company: if they did not acquire it, it might pass into alien hands, and the Company's footing would be lost. A proclamation was issued to provide laws for Europeans in the country by the High Commissioner at the Cape who held the right to legislate for Protectorates in South Africa in the name

of the Crown. These concessions to the Company were formally approved by the Colonial Secretary, according to the terms of the High Commissioner's proclamation. Lobengula's Kraal was suddenly cleansed of the swarms of cosmopolitan adventurers, and his own powers were greatly diminished: never for a moment did he realise the magnitude of what he had bartered away.

In 1890 the first settlement was made in Mashonaland. Struggling through wild territory the pioneer force met every difficulty, hewed its way through forests which had never before seen white men, and circumvented floods. They formed settlements, constructed roads, organised police and justice.

The Matabele were a stronger race: they refused to recognise that the advent of the Company had spelled the end of their old marauding life. They continued their fierce raids on their neighbours, the Mashonas: in doing so they trailed their forces over the fields and farms of Europeans, murdering and ravaging as they went. The Company at first responded by objections which were, to Lobengula's mind, insolent repudiations of his royal power. The Company soon saw that they must fight. The war began in 1893 when the Company's army reinforced from Bechuanaland routed Lobengula's army in three decisive actions. Lobengula escaped, but died in his flight; one English patrol was surrounded by the natives and was cut down to a man, but the Matabele were dispersed and the native kingship was at an end, and there were no claims made upon the throne. The Company derived their rights over the territory from the permission of the Crown of England. An administration was set up in 1894 by an Order in Council. Power resided in an administrator and a council of four. The Company was responsible for its personnel, and also for justice and the maintenance of law and order. The natives were assigned land by a Land Commission, which at the same time safeguarded the Company's mineral rights. The land was registered, and in the Ordinance the unoccupied land was called the Company's land.

Henceforward the Company administered the country: the necessary expenditure was very large: the revenues were insufficient to cover it. The Company itself had to defray the annual deficits. Consequently there were no profits and the Company were unable to declare dividends. Two years passed,

and the Mashonas rebelled. They were easily put down, and a Legislative Council was set up consisting of elected members, besides members nominated by the Company. The Company began elaborate schemes for the development of their land. The potential wealth contained in them was enormous. The waste was fine grazing land for cattle, and fertile for crops, and facilities for exportation were given by the new railway with which Cecil Rhodes intended to link up Cairo and the Cape. Many immigrants were attracted to the country and the value of the land increased sharply. The Company granted tracts of land to these immigrants, and set aside large cattle farms for itself. When the question of the ownership of the unoccupied areas arose, the Company as a measure of self-protection transferred its land revenues to its commercial account. At first the accounts had not distinguished between administration and commerce. It was evident that responsible government would soon be given, and the Company in the interests of its shareholders was anxious to secure the return from the development of the land. This was natural as it had spent enormous sums to procure the territory for European settlement, and up to this point there had been no return to compensate the shareholders for the money they had sunk in the Company. The Directors strongly maintained that the undeveloped lands belonged to the Company.

Great issues sprang from this dispute, and it became a question of high imperial significance. A statute of 1833 empowered the King to refer a case of this nature to the Judicial Committee of the Privy Council. The reference was made in 1914 at the request of the Legislative Council, but the war made it impossible to arrange the hearing before 1918. It took place in April 1918, and occupied ten days. There was neither plaintiff nor defendant, but it was arranged that counsel for the Company should open their case. The natives' case followed, thirdly came that of the elected members of the Legislative Council, and finally that of the Crown. F. E. Smith held the leading brief for the Crown with the Solicitor-General, now Lord Hewart, Mr. (now Sir Herbert) Cunliffe, K.C., and Mr. (now Mr. Justice) Branson.

The case of the Company was that there had been no actual conquest after the Matabele campaign of 1893. This could not be maintained, for before the hostilities began Lobengula was the admitted sovereign. When he was dethroned, the Company

became the sovereign power. The Company based its case on the Lippert Concession, but unfortunately for them the grant had never been acted on, nor did it carry any rights of ownership. Also the agreed payments had not been made, and the conditions had not been fulfilled. There only remained to the Company the claim of undisputed possession, for only the Crown can lay claim to acquisitions by the title of conquest. They relied therefore upon a plea of acquiescence on the part of the sovereign. There was no documentary proof of an express grant, and the Company claimed that the Crown must have acquiesced in their presence in the lands both as the government and as a mercantile body.

The natives were handicapped by the fact that they were not representative of the Matabele, and their claim clashed with the legality of all the settlement of land which had been effected by legislation, and with European settlement. Now the Matabeles were disintegrated, and the whole tribal distribution completely altered, by emigration and expansion. The Elected Members' counsel could not show that there had been any limitation of the Crown's rights.

The Judicial Committee agreed to Smith's argument that from every possible standpoint, historical and practical, the unoccupied lands were vested in the Crown, and the great and rich areas were thus preserved to the community of Rhodesia. F. E. Smith admitted in the course of his argument that the Company might expect adequate compensation, because it had spent large sums of money in the preservation and development of Rhodesia. The Privy Council agreed and the amount was assessed by a Commission under the chairmanship of Lord Cave, which travelled out to Rhodesia and made its findings there. The community of Southern Rhodesia is now the owner of a great property, yielding immense wealth, both actual and potential.

This case, which lasted for fourteen days, was a great personal triumph for F. E. Smith. The question was an immensely complicated one, and the Scottish Lord Advocate opened for two days in a most powerful and persuasive speech on behalf of the Company. He appeared to carry the Committee completely with him. Mr. P. O. Lawrence, later Mr. Justice Lawrence, and Mr. Charles Russell, K.C., argued for the members of the local Parliament on the same lines as F. E. Smith, but before him, and

spent two days trying unsuccessfully to persuade their lordships. When Smith arose, the case seemed to be irretrievably lost ; but in a day and a half, by a most brilliant exhibition of every form of forensic art, the situation was completely saved. His dominating personality effaced the deep mark left by the Scottish Lord Advocate, and converted the judges. A critic who listened to the whole case wrote that the late Sir Charles Russell at his best had never done anything finer.

## VIII

### *LAW OFFICER: THE GENERAL ELECTION OF 1918*

**I**N the political skirmishes of 1918, F. E. Smith took no part. He had his hands full with his legal work and he was no more interested than the general public in the ordinary parliamentary business while the war drama was hastening to its tremendous finale in Palestine, Macedonia, Venetia and Northern France. He seldom intervened in debate. Behind the scenes he was constantly advising on matters both great and small, such as Mr. Fisher's ambitious Education Act, or the Imperial Conference of June, or—to mention a notorious and now forgotten case—the prosecution of Mr. Pember-ton Billing for libel arising out of his stories of a "Black Book", a prosecution which ended in his acquittal. There was much agitation in this year against aliens; there was much labour unrest. And one of the last measures passed by the Parliament of 1918 that was now in its closing session was a Bill to permit women to be elected to the House of Commons. But the Attorney-General was not, so far as the public knew, actively concerned with any of these matters, and therefore his biographer may pass them by.

In July 1918 a Lordship of Appeal fell vacant through the death of Lord Parker. The Attorney-General by custom had the refusal of this high judicial office, which carried with it a life peerage. But he declined to consider it. He had set his mind on achieving high political office, and he would not be deflected into the humdrum of ordinary judicial work, however tempting the post might seem to an overdriven barrister who cared for leisure.

The military situation in France at last changed for the better in the summer of 1918. Three great German offensives had

bent but failed to break the Allied front, and the British Army, on August 8, delivered the smashing blow in front of Amiens which caused General Ludendorff to lose his nerve and admit that defeat was at hand. With the prospect of victory, the allied nations began to debate the peace terms that must be imposed on the Central Powers. Prominent among them was a demand for the punishment of the German Emperor and his chief advisers who were regarded by the English people, at any rate, as personally responsible for the war. F. E. Smith, speaking at Liverpool on September 18, declared that Germany must pay the penalty for her crime against civilisation.

“No neutral”, he said, “must be so uninstructed as not to know that the Power which drew the sword, drunken with dreams of world-conquest, the Power whose leaders would one day have to face at some Bar the charge that they alone were responsible for the murder of the brilliant youth of Europe, has been exposed and should be punished.”

He took the opportunity afforded by the issue of a new edition of his now well-known text-book on *International Law*, which appeared in October, to define his position in the preface. Here he wrote :

“It may appear to some that the present moment was hardly opportune for a new edition of a work upon international law. I do not share that view. It is true that the authority of this body of public doctrine has for four years reeled before a savage, calculated and almost successful assault. It is true that an immensely powerful and highly educated nation has challenged the whole world by its repudiation of public law . . . it is true that, had victory in the final result settled on the standards of Germany, we could have burned our Grotius, our Vattel, our Phillimore, our Wheaton and our Hall. But in ever increasing numbers the world is ranging itself against the international anarchist. The audience watching the arena in which his crimes are displayed grows more and more hostile. And more and more too, the logic of the stricken field is asserting its cold and merciless conclusions. . . . And today there must be sounding in the ears of the guilty the dreadful words of failure and doom.

“And it should never be forgotten that failure should involve doom. The future of civilization required that the authority of public law shall be reasserted with as much notoriety as marked the challenge, and it cannot be so reasserted without requiring from those

who sought to destroy it, a punishment so memorable, because so dreadful, that the offence will not soon be repeated. For the correction of specific infamies international law does not exclude the castigation of guilty individuals, however highly placed."

He gave an interview to the *Empire News* of October 20 on the subject that was now absorbing public attention. He held that, although the principles of International Law had been frequently and grossly violated in the last war, that did not imply that such law should disappear. The relationships of the States of the world must continue and there must be some law to regulate them. It was clear to him that considerable changes must be made in it. The laws relating to blockade and contraband would have to be altered, as would the law relating to neutrality. New rules governing the use of submarines and mines would have to be laid down, for an utterly illegal use of them had been made in the last war. The most important duty was to *punish those who deliberately broke the law of war*. This must be ensured for the future, and should be put into execution as soon as hostilities are at an end. By so doing, law and civilisation would be vindicated, and future offences to a large extent be prevented.

In the *Daily Express* of November 4 he produced a new scheme for the trial of guilty parties in Germany by a Grand Court of the Allies. The Germans, he argued, had always been in the habit of justifying their outrages, especially in Belgium, on the ground of military necessity. The Hague Conventions, it was true, spoke of the exigencies of military necessity as justifying certain acts when an army found itself in a certain position, but the occasions were strictly limited and were exceptions, not general rules. The Conventions recognised no adoption of a universal and overriding military necessity. The Germans, as a nation, set out with the deliberate intention of ignoring this principle of International Law. So much was proved by their official manual of war. The *Kriegsbrauch im Land-Kriege*, issued in 1902, was full of the inhuman doctrines of Clausewitz and Von Bernhardt, which disregarded the spirit of the Hague Convention. The essence of these doctrines was :

"Care for nothing but the Fatherland. Your government has, it is true, entered into certain conventions and the world has fixed



certain customs and usages of war, but all these things are as naught. They do not bind you when you go to war. Your business is not with laws, but simply to crush the enemy by every means in your power, and to do it as quickly and effectively as possible."

It was as a protest against such a view that the whole body of law, national and international, had grown up. "We do not allow", he said, "a man or a nation to judge his own case on the plea of necessity."

He denied also that the plea of a superior's orders would be sufficient to exculpate a German officer if brought to trial. "An inferior is protected from the consequences of his act if it is done under such orders of a superior officer as he is legally entitled to give. If the superior is not and cannot be entitled by law to issue such orders, both he and his inferior are equally guilty." It was therefore impossible to shuffle off the whole blame on the Kaiser. If it were, the result would be that every single individual would transfer the blame to a successive superior, and one man would have to be punished for the wickedness of millions.

"The Prussian," he said, "like other moral outcasts, must be taught that murder and outrage do not pay, and that the sword of justice waits on the criminal. . . . As to procedure, a Grand Court might well be set up, consisting of allied representatives, civil and military, for the purpose of trying the guilty, and especially those who were caught red-handed, or were observed committing crime. A special point must be borne in mind. The guilty will perhaps try to put themselves outside the jurisdiction of such a court. The surrender of those who are not in allied custody should be demanded under the terms of peace."

F. E. Smith saw no practical difficulty in setting up such a Court, and believed that it must be set up if international law was to be established as a fact and not a phrase. "If those who are provably responsible escape, is there any particular reason for supposing that, when this world convulsion is forgotten, others will not be found bold and bloody enough to tread the same guilty road?"

The next seven days saw the outbreak of revolution in Germany, the flight of the Kaiser into Holland, and the acceptance of the new German Government of the severe terms dic-

tated by the Allies as the price of an armistice. Mr. Lloyd George now saw the way cleared for the General Election which was long overdue and which he meant to fight as leader of a Coalition or National party. All the members of both Houses who were favourable to this view attended a meeting at the Central Hall on November 16 and displayed great enthusiasm for the Prime Minister and Mr. Bonar Law, his *fidus Achates*. Parliament was prorogued on November 21. Next day Mr. Lloyd George and Mr. Bonar Law issued a manifesto appealing for national support for the Coalition, so that a good peace might be secured and the work of restoration begun. The General Election was fixed for December 14.

The Attorney-General was in full agreement with his chief's policy. He had long felt that the immense problems which faced the country at the return of peace could only be solved by thorough co-operation between the best men of all parties, and that it would be suicidal to attempt to revive the old party divisions in a new and very different era. It will be remembered that in the pre-war years, when party passions were at their height, F. E. Smith had sought, not without some encouragement from Mr. Lloyd George and Mr. Churchill in the opposite party, to formulate a National programme by which the strife over Home Rule, Tariff Reform, and the Second Chamber might be compromised once for all. Now, when these problems had receded into the background, at least for the moment, he could revive his plea for a national effort more hopefully than before. Co-operation for the good of the community as a whole was to be henceforth the burden of his speeches on public affairs. He would have enlisted not merely Conservatives and Liberals, but Socialists also, under the national banner. He had thought it possible that many other moderate Labour men, besides Mr. Barnes, who had joined the War Cabinet when Mr. Henderson left it, would continue to work with the Coalition when the war ended. Unfortunately the majority of the Labour party ruled otherwise, at their meeting at the Albert Hall on November 14, and decided to oppose Mr. Lloyd George, whom they distrusted and feared. F. E. Smith was thus forced to become a most strenuous opponent of Socialism, which to him appeared not only unsound economically, but perniciously anti-patriotic, tending as it did to

divide and discourage the national effort towards recovery. We shall see this view developed in many speeches during the post-war years.

The War Cabinet, having determined on an election at which its full support would be given only to those Conservatives and Liberals who could be trusted to support the Coalition in the next Parliament, had to define its electoral programme. In doing so, it had first to decide how far it could satisfy the popular clamour for the punishment of the war-makers who had inflicted such suffering on Great Britain, and the whole world. The head and chief of the criminals was, in British eyes, the ex-German Emperor, and the cry "Hang the Kaiser!" expressed very accurately the mood of the moment which the War Cabinet dared not ignore. It was easy for an excited and overwrought public to demand the Kaiser's trial and punishment. But it was not easy for the Government to devise practicable means of satisfying the demand. They knew that French opinion favoured the idea and that some French jurists at any rate had declared it to be legally possible, although we may doubt whether any Frenchman in 1815, outside Legitimist circles, would have admitted the Prussian claim to try and execute Napoleon on a charge of high treason against Europe. Be that as it may, when the War Cabinet asked its Law Officers to advise on the question, it set them a difficult task. We know that the Attorney-General sought help from a committee of leading jurists. We do not know exactly what the committee reported or what the Attorney-General himself recommended, since these matters were and are Cabinet secrets into which we cannot intrude. But it can be said with confidence that F. E. Smith recognised the virtual impossibility of devising a tribunal which would command the respect of Allies and enemies alike and which would not be regarded as a mere simulacrum of justice. F. E. Smith was, we know, firmly convinced that the Government ought to institute proceedings against the former War Lord at whose word Germany had plunged Europe into a war more destructive by far than the campaigns of Attila, of Genghis Khan, or of Napoleon, in defiance of the basic principles of international law. That such an offender should go unscathed seemed to the Attorney-General to strike at the roots of public policy. He felt, and repeatedly said in his

public speeches—and he must therefore have said as much in private to his colleagues—that if the ex-Emperor escaped justice, humble men would feel that his rank and position alone had saved him from the penalty due to his crimes. On the other hand, the Attorney-General must have foreseen the technical difficulties that stood in the way. How could the ex-Emperor be extradited from Holland? It needs no profound legal knowledge to observe that, even if English law might furnish a plausible case for his extradition, Dutch law might not. The Dutch Government might be constrained by the Allies or the nascent League of Nations to deliver up the ex-Kaiser, but that was a matter for diplomatists rather than for lawyers. Assuming, however, that the Allies could obtain the custody of the ex-Emperor's person, and assuming that he should then be put on his trial, the Attorney-General evidently felt that the court might be composed of Allied judges and that the indictment should be as clear and precise as possible, so as to be understood by the world at large. The main charges against him would have been, if we may recall the general views held in November 1918, that he had suddenly invaded Belgium in complete defiance of international law and of the Treaty of 1839 by which Germany, France, and Great Britain had guaranteed to defend Belgian neutrality—and, secondly, that he had ordered the ruthless submarine campaign against merchant ships, hospital ships and passenger steamers which had caused the deaths of many thousands of non-combatants, irrespective of age or sex. Whether the Attorney-General, in the full exercise of his responsibility, definitely recommended that the ex-Emperor should be tried at all, we do not know. But it is at any rate significant that when Mr. Lloyd George, on December 10, 1918, summed up the Coalition policy which he invited the electors to support by their votes, he placed first the demand that the ex-Emperor should be tried, and secondly the demand that those guilty of atrocities in the war should be punished. It is common knowledge that Holland firmly refused to surrender the ex-Emperor to whom she had given shelter, and there, for all practical purposes, the matter ended. But in those excited weeks following the Armistice Allied statesmen might perhaps be excused for failing to realise that they could not try the ex-Emperor, or inflict any punishment

additional to that which he had brought upon himself by his ignominious flight and self-constituted exile.

With preparations for the General Election in full swing, F. E. Smith's first task was now to make sure of his own seat. The vast extension of the franchise under the Act of 1917 had involved a complete redistribution of the constituencies. Liverpool had now eleven divisions instead of nine, and most of them were changed in character. F. E. Smith decided to leave his old Walton seat and to contest the reorganised West Derby division. He opened his election campaign there on December 2, 1918, with a powerful speech, in which he made public the determination of the Cabinet to secure the punishment of those who had brought on the war and to exact adequate indemnities from the defeated enemy nations. The Cabinet would, he assured his hearers, press for the extradition of the ex-Emperor. The election campaign in West Derby was lively and exciting, and F. E. Smith's Socialist opponent, Mr. George Nelson, brought great personal bitterness into the fight.

He started with light rifle fire, and said that Smith as a politician was "not only useless, but an absolute menace to the working classes". He referred contemptuously to his "glibness of speech" and his "lawyer's sophistry" with which he "hoodwinked the electorate, and drew the red herring across its track with all his past success". Smith was never behind-hand with a retort. In his second address on December 2 he answered his opponent :

"When I observe that my opponent in a brief address says, 'I have not got £10,000 a year', I do not attach much importance to that kind of argument, and if I pursued it I might say that I had not got a silk hat—(loud applause); but if it interests anyone to know it, I happened prior to the war to make £20,000 a year before I was a Minister at all. I gave that up to become a Minister of the Crown in order that I might attempt to do some public service."

In later meetings Mr. Nelson brought up his heavy artillery. He propounded a series of extremely personal questions. Sir Frederick Smith, he said, boasted that he had been sent to America at the request of the War Cabinet on a mission of high national importance. Did he finish that mission? Will he explain why he came back so quickly? Was it, or was it

not, due to what in plain words might be described as a blazing indiscretion on his part? Was Sir Frederick Smith's brother, Mr. Harold Smith, not of military age? Did he, or did he not, go with Sir Frederick to America simply in order to avoid military service? What did Sir Frederick do to earn £10,000 a year?

The Attorney-General, stung by these unworthy personal taunts, replied with even greater bitterness.

"My business in life", he said, "has been more to ask questions than to answer them, but I propose to answer the questions that he has put to me. Four of the questions are concerned not with myself but dealt entirely with my brother. I might as well ask Mr. Nelson from the point of view of relevancy whether his grandfather had a good moral character. (Laughter.) I don't know whether he had or had not. I am perfectly prepared to believe that he had. But what that has got to do with his candidature or my candidature, I don't really know. But having regard to the fact that this silk-hatted Socialist has put these questions, let me say all I happen to know about the position of my brother."

After defending his brother's record, he said :

"Another question was, 'Did Mr. Harold Smith go with me to America in order to avoid military service?' I can only say that I am surprised that one small head can hold at the same time so much malice and so much ignorance. I was asked by the War Cabinet to go to America for a purpose which they believed was of high national importance. It was no pleasant voyage. . . . Another question asked by my opponent is about my income. He never tells us whether, if he had had the brains to have earned that income, he would have refused it. (Laughter.) This frock-coated revolutionary, this Lenin in a silk hat, talks a great deal about my income. I did not take it from anybody else. I made it by my own brains. (Laughter.) When I meet this horny-handed son of toil, the apostle of the new Bolshevik movement in Liverpool who has never been seen for twenty years except in a frock coat and silk hat, I say: 'Let us understand what you mean? Do you mean you would not have taken it, and given it to the Independent Labour Party?' (Laughter.) It is the language of childish jealousy and nothing else." (Cheers.)

The contest became more and more bitter as the last week of the campaign opened. Mr. Nelson accused Smith of evading military service, and of flying to the Press Bureau as to a

“funk hole”. The Attorney-General was determined to tolerate no more personal attacks of this nature, and threatened legal proceedings. At a great meeting at St. John’s Schools he defended his military record and read out the letter written to him by Colonel Dugdale, and quoted in a previous chapter.

“As Mr. Nelson has chosen to say these things, he said them under circumstances which prevent me taking action in the Law Courts, because such attacks are only actionable if they are put in writing. If Mr. Nelson will write to any Liverpool newspaper and state that what he said about Sir Frederick Smith two nights ago is true, I will issue a writ tomorrow and take him before a special jury at the Liverpool Assizes, and they shall judge between me and him. (Loud applause.) They shall hear me on oath and him on oath and my commanding officers on oath, and those who were at the Press Bureau in those days, and, now that he has dared to say what he has said with impunity and protection, I say if he refuses my challenge to put that in writing he will be branded before all Liverpool not only as a slanderer, but also as a coward.” (Applause.)

Mr. Nelson ran away from the challenge. F. E. Smith pursued him without mercy. Speaking on December 10, he said :

“I am informed by those who are in a position to form a judgment that he is a member of the City Council, that nobody has ever listened to a speech he has ever made there, that he has contributed nothing of thought to any kind of discussion, and never reached a particle of distinction in any single department of human activity. If you think he would be an ornament from this constituency in the House of Commons, then send him there.” (Laughter.)

In his last speech before the poll, F. E. Smith on December 13 expounded at length his reasons for believing that the country needed a National party supporting a National Government—a theme which he never tired of elaborating thereafter. Next day he had the satisfaction of heading the poll, for the fourth and last time, by a very substantial majority over Mr. Nelson. Ten out of the eleven Liverpool seats went to the Coalition. Elsewhere the Ministry secured an almost equal triumph. That the Coalition would prevail was a foregone conclusion, for its Liberal candidates were assured of Conservative support, and its Conservative candidates could usually count on many Liberal votes, whereas those Liberals who had not, in the phrase of

the moment, received "coupons" from the Coalition organisers, because they had supported Mr. Asquith in the Maurice vote of censure debate of May 9, 1918, were denied any Conservative assistance even where they had only Socialist opponents. Nevertheless the Coalition victory was far more sweeping than anyone had expected. In the new House of Commons, containing in all 706 members, Mr. Lloyd George had 342 Unionist and 136 Liberal supporters. There were also 51 Independent Unionists. The opposition included 27 Liberals—whose leader, Mr. Asquith, had failed to secure re-election—with 59 Labour members, 11 Independents and 7 Nationalists. Besides this confused little medley, there were 73 Irish Sinn Feiners who refused to take their seats in a Parliament which they would not recognise. The Government thus had an overwhelming majority—the greatest ever known in the modern House before the still larger majority secured by the National Government in October 1931. But it should be noted that, while the total Government poll was about 5,000,000, that of the Opposition was only half a million less. F. E. Smith, unlike some of his friends, always kept this fact well in mind. It is important also to observe that, while Mr. Lloyd George had retained the support of a large section of the old Liberal party, his Conservative supporters outnumbered the Liberals by more than two to one, and formed an actual majority in the House, in the absence of the Sinn Feiners. The Prime Minister was thus to be dependent on Conservative votes—a fact which is the key to the political history of the next four years.

The Christmas holidays of 1918 saw the arrival of President Wilson on his way to Paris for the opening of the Peace Conference. At the New Year, Mr. Lloyd George set himself to reconstruct his Ministry. In the new Government Mr. Lloyd George invited F. E. Smith to continue as Attorney-General. But, as he told his constituents and friends at the Liverpool Conservative Club on January 16, 1919, F. E. Smith was informed that the Attorney-General would not be a member of the new Cabinet. In this decision Mr. Lloyd George was reverting to what had been the normal practice before 1912. Mr. Asquith had in that year admitted his Attorney-General, Sir Rufus Isaacs (now Lord Reading), to the Cabinet when Lord Haldane passed from the War Office to the Woolsack.



This step, it was understood, would not form a precedent, but Sir Rufus's successors, Sir John Simon, Sir Edward (now Lord) Carson, and Sir Frederick Smith himself, each in turn were given Cabinet rank, partly no doubt for convenience in the strenuous days of the war when the Cabinet was daily faced with many troublesome legal problems. There was, however, much to be said for returning to the ordinary constitutional procedure, under which the chief Law Officer is the adviser, but not a part of, the executive. Moreover, Mr. Lloyd George, like other modern Prime Ministers, desired to limit the number of Cabinet Ministers, always too large for the prompt despatch of executive business, and exceptionally large in the new Government of January 1919. However that may be, it was natural that F. E. Smith, who had held Cabinet rank for more than three years, should be unwilling to relinquish it, despite the substantial rewards which fall to the Attorney-General in time of peace—rewards which, it may be noted, had been considerably curtailed during the war years. While thanking the Prime Minister for his confidence, F. E. Smith made it clear that he could not accept the Attorney-Generalship without Cabinet rank, and that he would prefer to return to private practice at the Bar, while continuing to give the fullest support to the Government in the House of Commons.

The Prime Minister then astonished him by proposing that he should become Lord Chancellor, and gave him a night to reflect on the matter. It was a dazzling prospect even for F. E. Smith, who never set limits to his ambition. To become, at forty-six, the head of the English Judiciary and to preside over the House of Lords would have fulfilled the wildest dreams of almost any brilliant barrister. And yet there was reason to hesitate. For the acceptance of the Woolsack meant first of all that he must leave the House of Commons and thus virtually abandon all hope of becoming leader of his party and, if the fates were kind, of taking office as Prime Minister. Lord Rosebery's melancholy failure in 1894-5 had convinced Liberals that there must never again be a Liberal Prime Minister in the House of Lords. Lord Salisbury, as Conservative Prime Minister, had indeed achieved a conspicuous success; but he was an exceptional man and many Conservatives doubted whether any peer could ever again head a Conservative Cabinet

—doubts that were to be confirmed in 1923 when Lord Curzon, despite his superior claims, was passed over, on the resignation of Mr. Bonar Law, in favour of Mr. Baldwin as Prime Minister. Again, acceptance of the Woolsack meant that F. E. Smith could never resume his practice at the Bar. If and when the Coalition Ministry came to an end, and he had to retire from his office, he must be content with a Lord Chancellor's pension and with the duty that devolves upon an ex-Lord Chancellor of assisting in the judicial work of the House of Lords.

F. E. Smith was not a rich man and, as he had told his constituents at West Derby, he had made great sacrifices in taking and holding office during the war. However, when he weighed the matter as he sat alone in his London house that night, he came to the conclusion that he must accept the glittering prize, putting aside mere considerations of gain as trivial compared with the great dignity of the office in which, he must have felt, he could display his talents to the full in the service of his country. He discussed the question with Mr. Churchill next morning, January 7. Mr. Churchill advised against acceptance; but in spite of this advice, F. E. Smith went to breakfast with the Prime Minister, and formally accepted the post. When he came to convey the news to his wife, he was compelled to do so in guarded language as the appointment was still secret. He sent her the following telegram: "I salute my ennobled but impoverished family." When the list of the members of the new Ministry was published on January 10, no appointment aroused more interest or excited more comment than that of the youthful Lord Chancellor. He did not have a good Press, one leading newspaper going so far as to remark that his appointment was "carrying a joke too far". He was overwhelmed with congratulations by his many friends at home and oversea. Probably none of them amused him more than the brief note in which his veteran predecessor, Lord Finlay, assured him that he would at any rate appreciate the comfort of the Woolsack.

Whether the new Lord Chancellor felt that his office was a political cul-de-sac was known only to himself. But a significant remark that he let fall some time later may be noted for what it is worth. The Warden and Fellows and old members of Wadham College had a Wadham dinner in Gray's Inn Hall on July 8, 1919, by permission of the Treasurer and Benchers,

to do honour to the Lord Chancellor, the most eminent of Wadham's sons. His health was proposed by his old friend and rival, Sir John Simon. In his very brilliant and witty reply, the Lord Chancellor told his audience, many of whom were his contemporaries at Oxford, that he had "climbed the greasy pole". And he added, in a significant aside which those who heard it have never forgotten—"But there are other greasy poles".

## IX

### LORD CHANCELLOR (1919-20)

**S**IR FREDERICK SMITH was sworn in as Lord Chancellor on January 14, 1919, and received the Great Seal. He was created a Baron of the United Kingdom and took from his native town the title of Baron Birkenhead. It was a favourite joke on the Northern Circuit that Mr. Justice Bigham, in taking the title of Lord Mersey, had said that "he was leaving the Atlantic for F. E."

To begin with, the new Lord Chancellor had a mortifying experience in respect of his house. He was offered quarters in Royal Court in the Palace of Westminster as an official residence. This is a very large house and a very high one. Now the Lord Chancellor's official house consists of one floor of it, only approached by the lift which caused so much controversy. Lady Birkenhead, who spent many days there with Mr. Wilson from the Office of Works, came to the conclusion that it was impossible to live in without a lift, and that a large staff of servants would be needed. It had only one bath-room, but the least number that they could manage with was three, including one for their children and one for the servants. Mr. Wilson and Lady Birkenhead had all the Gothic oak panelling and furniture pickled, and collected portraits of early Lord Chancellors for the dining-room. They were to move into the new quarters in a week's time. All the bookshelves had been taken from 32 Grosvenor Gardens at their own expense, and cut and altered to fit one of the large rooms. The Lord Chancellor's famous library contained about 12,000 books.

A great outcry now arose about the proposed expenditure on this house, and questions were put down to be asked in the House of Commons. Mr. Bonar Law informed the Lord Chancellor that he was sure he could get the matter settled, but that there would certainly be a lot of unpleasant questions and

personal comments from political adversaries. Lord and Lady Birkenhead talked it over. Neither of them was enthusiastic about this vast and rather gloomy house, and they decided that they would abandon the idea and go back to their own house in Grosvenor Gardens, which had been occupied by the American Red Cross during the war. The episode gave great material to the caricaturists in *Punch* and other papers. One cartoon showed the family "queuing up" for the bath.

The appointment of so young and vigorous a politician and barrister to a position which was traditionally held by grave and venerable men aroused much curious expectation; and a fair measure of hostile comment. But Lord Birkenhead was extraordinarily adaptable and showed himself from the first a complete master of the situation. He took his seat as Lord Chancellor on February 4, 1919, and began trying an appeal as if he had occupied the Woolsack for years. Parliament met on February 11 to hear the King's Speech, and the Lord Chancellor presided over his first debate in the House of Lords with irreproachable dignity. If his critics expected him to revolutionise the procedure of the Upper House, they were disappointed. He was an innovator only in this respect, that he showed himself determined from the beginning to intervene constantly in debate and to express at length his opinions on public policy and the views of the Cabinet on controversial problems. Never has the Government been so well represented in the House of Lords since the death of Lord Salisbury as it was in the four years of Lord Birkenhead's Lord Chancellorship.

We can best illustrate his political activities at this time by quoting from some of his more important speeches. They reflect the immense seriousness of the post-war situation and the manner in which the Lord Chancellor addressed himself to them.

He made his first speech in the House of Lords on February 18 in a debate raised by Lord Buckmaster on Industrial Unrest. Adjusting himself quickly and easily to the new and difficult atmosphere, he said:

"Everyone in this country is demanding new conditions of life. The nation has been living on its capital and liking it. In this spirit everyone wishes to work less and to receive more. The tendency is

quite simple and quite universal, and this is at a moment when, unless we produce upon an enormous scale, the nation must entirely perish. The situation is, as I have said, charged with the most pregnant anxieties, but I do not believe that it is hopeless. It is, however, idle to talk of cure, unless one has made some attempt, however superficial and incomplete, to analyse the causes of the mischiefs by which we find ourselves confronted today.

"I have no doubt as to the first of these causes, the first in order, the first in importance. It is the consequence of the reactions of the war, the agony of bereavement, the hysteria of hope deferred, through which the whole community has passed. . . . Your Lordships will not have forgotten that after the battle of Waterloo England passed through what were, I suppose, four of the most anxious years of its history in times of peace. . . . This unrest is not particular to this country. . . . Civilisation in all the world may have conquered Germany, but it has almost swooned in the exertion. The cure for this cause can only consist of time, of patience, of the gradual obliteration of painful memories, and as far as the case is applied to those who have actually suffered something can doubtless be done by showing the practical sympathy which all sections of the nation feel for those soldiers, thanks to whose exertions, and to whose exertions alone, your Lordships are today deliberating in security. . . .

"Of these causes I should say that the second in order of gravity is the derangement of every sound and reasonable financial standard. Thoughtless people say quite simply—they can be heard saying it in the streets, and"—a characteristic aside—"if your Lordships use them, on the omnibuses—'There is plenty of money: look what has been spent in the last few years'. My Lords, that dangerous spirit is everywhere. There is no section of the community which is not spreading these most dangerous fallacies. My noble friend (Lord Buckmaster) said that a great part of the fault for this is chargeable on the Government Departments. He says that there has been great waste in the war. Of course, it is true that there has been great waste in the war. My noble friend knows, as those of your Lordships who have not been in the Cabinet cannot know, how impossible it is in days so gravely critical to observe the doctrines which are suitable to peaceful economy. The remedies, and the only remedies for this danger, are explanation, education, and propaganda. . . ."

Lord Birkenhead went on to say that he regretted the closing of the Ministry of Information which might have instructed public opinion as to the urgent need for restricting further expenditure. He referred to the triple menace of strikes among

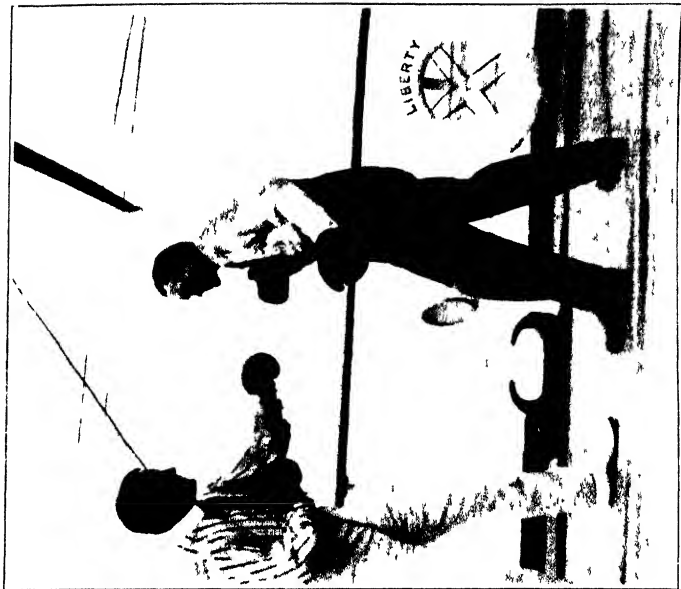
the miners, railwaymen, and transport workers, and declared that the Government was considering the question of hours of labour. He lamented that "men neither insignificant in numbers, nor contemptible in influence had become converts to that inscrutable disease, the bitter enemy of democracy, Bolshevism". Publicity was the best means of combating it. Recalling his part in the general election at which he had spoken in thirty or forty constituencies, he said: "I came away from addressing these great democratic audiences with a profound and unconquerable belief in the faith and stability of the overwhelming majority of the people of these islands"—and he reminded the House that every Bolshevik candidate had been rejected at the polls. Mr. John Maclean, who had been imprisoned for his share in the subversive movement on the Clyde, had polled a very small vote in opposition to Mr. Barnes in his Glasgow constituency.

In closing, he referred to the scandalous housing conditions revealed by the report of the Scottish Land Commission as a very natural cause of unrest which should be removed. "It is a shocking reflection", he said, "that when these Scottish soldiers went to the Battle of Loos—the largest Scottish army that ever fought under one banner since the Battle of Bannockburn—these were the houses to which they were to return. I remember a little-known but simple and affecting ballad describing the feelings of a British private soldier shortly before his death.

‘Far Kentish hopfields  
Round him seemed like dreams to come and go;  
The smoke above his father’s house  
In grey soft eddies hung.’

"If these boys, just before they gave the supreme proof of their devotion to their country, thought of the home to which they would return, a far different picture from that which is attributed in the ballad to the Kentish soldiers must in many cases have been before their eyes, and our wonder at their valour and devotion can only multiply a hundredfold."

On March 5 Lord Brassey raised a debate on the need for devolution of parliamentary powers to local legislatures to relieve the congestion at Westminster. The Lord Chancellor



LORD BIRKENHEAD AND CARPENTIER



STEVE DONOGHUE AND LORD BIRKENHEAD





from his own House of Commons experience pointed out that debates there must be long if the Opposition for party purposes were resolved to interrupt Government business.

“When I was in opposition, during the discussion of some of the most important measures, we had three or four highly trained experts, and they used to draft amendments which we had not either the time or the skill to draft for ourselves. I remember, in the case of some very important Bills, that these suggested amendments and observations upon the measures that were before the House of Commons attained such formidable dimensions that they amounted almost to the size of a book. I can still remember the pride with which one of these books was captured by the other side, and was produced in the course of the debate to the consternation of those who perceived the importance of their resources of debate getting into the hands of their opponents. But, just as we had our experts, so, behind the scenes, the Government had their experts, who used to fulminate the same methods of mine and counter-mine, trench and counter-trench. I can recall nothing like it, since the immortal contest in fiction between Sherlock Holmes and Moriarty.

“Do not let us make the mistake of thinking that there was no time for debate when that kind of thing was going on, as it was going on in the House of Commons month after month, and year after year.”

He went on to say that for the time being the division between parties had been largely obliterated so that the old kind of organisation was no longer practised, and he assured the House that there was no sort of popular demand for devolution in England, Wales and Scotland, and that—“it would, of course, be idle to come before your Lordships or any assembly of Englishmen at the present time and say: ‘We recommend that a legislature, whatever it deals with, be set up for Ireland.’ If an undivided Ireland is impossible, equally a divided Ireland is impossible.”

The speaker was expressing the considered view of the moment. He could not foresee what was to happen three years later.

We next find the Lord Chancellor intervening on July 2 in the second reading debate on the National Assembly of the Church of England (Powers) Bill. He expressed the Government's sympathy with the complaint that Church matters had been unduly neglected by Parliament, but showed very delicately

and skilfully that the main clause of the Bill which set up an Ecclesiastical Committee of the Privy Council, was open to grave constitutional objection. Further, he reminded the House that if the franchise for the election of members to the Church Assembly was unduly restricted, millions of persons who felt themselves to be members of the Church of England might find that they were excluded. "I should", he said, "regard the separation of the Church and State in these islands as something which was to be deeply regretted." In Committee on the Bill (July 10) he indicated that the promoters would do well to meet opposing views as far as possible without sacrificing their main objects. He himself would not vote for any amendment which the promoters could not accept, but the Government would decide, when the Bill reached the Commons, whether they could find facilities for it. One substantial amendment, the necessity for which he had stressed, was adopted, providing that no Church measure could pass without the express approval of each House.

The shadow of Ireland fell once more across the scene on July 15. The Lord Chancellor's old ally in the Ulster movement, Lord Carson, who was henceforth to cause him much embarrassment, had made a provocative speech at a great Orange gathering at Belfast on July 12. Lord Carson had demanded the repeal of the Home Rule Act, passed at the outset of the war and held up by another Act, and had hinted that he might call out the Ulster Volunteers to oppose the threatening development of the Sinn Fein agitation. It was natural that Lord Macdonnell should put down a motion inviting the Government to define its attitude towards the Irish malcontents in both camps, and the answer was awaited with much curiosity. Would Lord Birkenhead repudiate his former colleague? Had he, in regard to Irish affairs, come to adopt the views of his new chief? In his speech the Lord Chancellor took a realistic view. The Government, he said, had as yet come to no decision on Irish policy. It would never sacrifice England's friends in Ulster to the South. The pledge not to put Ulster under a Home Rule Parliament without her full consent had been given by Mr. Asquith, Mr. Lloyd George, and Mr. Bonar Law, and it would be fulfilled. The Lord Chancellor expressed surprise that "some people"—Lord Carson to wit—should have

made "menacing declarations of the course which they would pursue in a contingency which could not arise". He softened the rebuke by assuring the House that, while there was no question of repealing the Home Rule Act as Lord Carson demanded, the Act was in truth no longer applicable since Sinn Fein had repudiated it. He felt that Ulster would in no wise agree to join with a Southern Ireland that was dominated by disloyal men who promoted the murder of policemen and soldiers. On the other hand, Lord Birkenhead reaffirmed his old belief that Ulster must not block the way to a settlement for the rest of Ireland. For himself, he gravely doubted whether there could be any happy or permanent solution of the Irish difficulty until law and order were re-established there. The speech, it must be said, gave little satisfaction. The Government was evidently uncertain what to do next in view of the Sinn Fein menace.

The old opponent of woman suffrage had recanted in 1917, as we have seen, and he was whole-hearted in his conversion. If women could vote, the other ancient barriers restricting their activities must also be levelled. The Lord Chancellor had in March supported Lord Buckmaster's Bill to legalise the admission of women to practise at the Bar. On behalf of the Government he moved on July 22 the second reading of a far more generous measure the Sex Disqualification (Removal) Bill. Its main object was to open to women all those professions and offices the entrance to which was barred or supposed to be barred by law. It enabled women to sit as Justices of the Peace, and to act as jurymen, but it allowed the exclusion of women from the Indian Civil Service. It was a Government Bill, but the Lord Chancellor explained that a clause enabling the Crown to insert, in any patent granting a peerage to a woman, words entitling her to receive a writ of summons to the Upper House, was merely inserted so that the Lords might express their views; the Government Whips would not be put on to support it. In the course of his speech Lord Birkenhead criticised Lord Kimberley's Women's Emancipation Bill, especially in so far as it would grant the franchise to women on the same terms as men. The franchise had only been settled in 1918. If 5,000,000 new women voters were added to the electorate, there must be a general election, which was not desir-

able, since the Government had a long programme of legislation to carry out. Lord Kimberley's Bill was rejected, but his proposal was to be carried a few years later by a Conservative Prime Minister. As for the clause giving peeresses the right to sit in the House of Lords, it was strenuously opposed by the Lord Chancellor himself and was cut out of the Bill, while in Committee, on July 31.

Yet another troublesome theme had to be touched upon before the summer recess. Lord Brassey invited the Lord Chancellor on August 12 to indicate the Government's attitude towards the Labour disputes which at this time were numerous and disquieting. The Lord Chancellor made a very blunt reply. The position, he said, was very different from what it had been even so recently as January. During the war it was impossible to deal with labour on normal lines. "Whereas the policy of the Government, when war was raging, was that the paramount consideration was to keep people working, that will no longer be the paramount, though an immensely important, consideration." "The policy of the Government is, under normal circumstances, to let these disputes find their own salvation, and to let negotiations be carried on between the working men, who know their interests, and the employers, who know theirs." Such a speech would have excited no comment in pre-war days. But in 1919 a public accustomed to see Ministers continually intervening in labour disputes wondered how far the Lord Chancellor would be able to restrain his chief and his colleagues at the Ministries of Munitions, Shipping and Labour from yielding to the temptation to gain prestige by ending strikes. As it turned out, the Lord Chancellor's expectations were by no means fulfilled.

When Parliament adjourned in August, Lord Birkenhead could look back on a successful session. He had established his position in the House of Lords as spokesman for the Government and as a considerate and business-like chairman of debate. The Press continued to give great publicity to all his doings, but it was by now understood that the Lord Chancellor, though young in years, was fully competent to discharge his duties and thus no fitting subject for ridicule. A Lord Chancellor who played tennis and enjoyed the gaities of the London season was still a novelty, but it was seen that in public he

was hard working and sincere. Apart from his parliamentary duties and his judicial work, he was much in request as a speaker at all kinds of dinners and celebrations. No public man can have fulfilled more engagements of the kind than did Lord Birkenhead, and no one can have more consistently delighted his audiences by his wit and versatility. An occasion which gave him special pleasure was that on which he was presented, on April 28, 1919, with the freedom of Birkenhead. He was held up by snow on a Hampshire road in the morning while on his way to the North, and thus did not reach Birkenhead until long after the mayoral luncheon given in his honour was ended. But he made amends by delivering a long and interesting speech in which he first recalled his old associations with the borough, of which his father had been Mayor in 1888, and then went on to deal with post-war politics. He warned his hearers not to be impatient with the slow progress of the Peace Conference and then vindicated the claim of the Unionist party to have sought the welfare both of the working men and of "the humbler members of the middle classes who found that all the sacrifices of the war had fallen upon them, and none of the benefits". Thus honoured among his own people, Lord Birkenhead had one of the great days of his life.

Another occasion of unusual interest was the welcome given to Lord Reading, on May 26, 1919, on his return from his Washington Embassy to take up his duties as Lord Chief Justice. The whole judicial Bench headed by the Lord Chancellor received him in his court, which was filled with leading representatives of both branches of the legal profession. Lord Birkenhead paid a warm tribute to Lord Reading's services to the Treasury during the war, both in London and in New York, and to his skilled diplomacy at Washington which had facilitated close co-operation between the British and American Governments in the last year of the war.

The Lord Chancellor had to pay frequent visits to Paris, to advise on problems arising at the Peace Conference. Traveling by air, he could attend week-end meetings of the British delegates without neglecting his work in the House of Lords, which was unusually heavy in this year. In the spring, too, he led an English legal deputation to Belgium where they were the guests of the Belgian Bench and Bar. This interesting inter-

change of courtesies was repeated in the autumn when the Lord Chancellor welcomed the members of the Belgian Court of Cassation on a brief official visit to London. It is recorded that the Belgian jurists were more astonished at the youthful appearance of their host than by any features of our legal system which they had leisure to observe.

The autumn session of Parliament was uneventful and the Lord Chancellor seldom spoke. He intervened to some effect, however, on October 29, in a debate on the financial position during which Lords Emmott and Beaverbrook adversely criticised the Government for extravagance. The Lord Chancellor discussed the figures, and observed that certain payments due must be postponed, such as the cost of the Army of Occupation and Dominion repayments.

"Nothing has impressed me more," he went on to say, "with the scale upon which the British Empire waged war than the figures supplied to me by the Quartermaster-General at the War Office. He told me that on the day the Armistice was signed he had in his hands a thousand millions worth of disposable stock—materials, uniforms, and so on. We are told that eight thousand millions has been expended on every branch of the war. Yet here, on the day of the Armistice, as an illustration of the scale upon which the Government was preparing—and rightly preparing the instrument of war on the basis that it would continue—we find one-eighth of the expenditure actually in the hands of the Quartermaster-General. When I read of the expenditure in the Navy, multiplied almost in the proportion of three to one, when I think of the expenditure abroad—of the vast sums we spent in all parts of the world, when I think of all the money that was dissipated, I marvel, not that the cost of the war was so great, but that relatively it was so small.

"We can win back, but on one condition, and on one condition only: namely, that all branches of the population of this country realise that each is indispensable to the other; and that the moment when we have conquered the most powerful external enemy that ever threatened this Empire is not the moment to make permanent enemies among our own people."

In the autumn of 1919 Mr. Lloyd George reorganised his Ministry; but if this Peace Cabinet was to signalise the return to normal ways, it was disappointed. Peace had been made with Germany, but it was by no means certain, as the Lord Chancellor hinted in the House of Lords on November

27, in a debate on the Aliens Restriction Bill, that the Germans would fulfil the terms of the treaty. With the other enemy powers peace had still to be concluded; in Russia the Allies had not ceased to support the opponents of the Bolshevik régime, and there was reason to fear that Poland would be involved in war with her Russian neighbours. All reasonable men felt that, while Europe was in such a perilous state, the maintenance of a strong Government in England was a fundamental condition of progress. Yet already the enthusiasm which gave the Coalition its vast majority in December 1918 had faded. Hardships that could be borne without complaint in war-time seemed intolerable when war had ceased. The closing of the munition factories threw great numbers of well-paid men and women out of work, while at the same time many of the demobilised soldiers were vainly seeking employment. High prices and high taxes brought demands for higher wages on the part of workmen in the staple industries, which were enjoying a burst of prosperity—all too soon to be ended. Strike followed strike, and in the autumn and winter the increasing unrest showed itself in the rise of the Socialist vote at by-elections. Viewed in the calm light of history, the loss of a seat here or there to a Coalition with an overwhelming majority in the House may seem a trivial matter. Yet those who, like the Lord Chancellor, measured the strength of the Opposition by its polls rather than by the seats which it secured at the general election, might well be anxious. A by-election in the Spen Valley division of the West Riding, early in January 1920, intensified his uneasiness. Here a strong Conservative candidate, Colonel Fairfax, and Sir John Simon, the ablest of Mr. Asquith's Liberal supporters, had contested the seat with Mr. Myers, a Socialist, and Mr. Myers had not unnaturally won the seat in this purely industrial constituency. He polled 12,000 votes and his adversaries had 18,000 between them.

Lord Birkenhead felt that, if the anti-Socialist majority in the country continued to dissipate its strength in such internecine contests as at Spen Valley, the Socialist minority must come into power. He therefore published, in Lord Northcliffe's *Weekly Dispatch* of January 11, 1920, a vigorous article on the lessons of the by-election. There was, he declared, no more room for three parties. The Liberals who followed Mr. Asquith



could not hope to win a single seat. They must either join the Labour Party or join Mr. Lloyd George. But the constitution could not be successfully defended by "an invertebrate and undefined body such as the present Coalition". "That instrument was of admirable value during the war. But it is as ineffective an instrument for the purposes of fighting our English Communists as it was an effective instrument for fighting the Germans." And he went on to say that "this task cannot be effectively discharged except by a single party converging with definite purposes and under one banner", and that "for such a task the formation of a National Party is, in my judgment, indispensable and cannot long be delayed." He thus revived the idea that he had cherished in less propitious circumstances eight years before.

Mr. J. R. Clynes hastened to reply to these suggestions and to say that the men who were to make up the National Party were the same men who had reduced the Coalition to what Lord Birkenhead himself called "an invertebrate and undefined body".

"A National Party", he said, "cannot be made up of bureaucratic selections, favourites, and failures. . . . A National Party will emerge from the party which fights for getting the best national conditions for the people; but if the honoured name is to be taken by people who have grown desperate because they have failed under another, they will find that they have done more to place great masses of people in their respective positions for the beginning of the class war than anything yet attempted."

This indeed was the general reply from the Socialists, that the National Party would be only the old Coalition swathed in a new garment. Lord Birkenhead's suggestion was attacked on these and other grounds in the *Daily News* and *Daily Herald*, and to a lesser degree in the *Morning Post*, which had its own little "National Party", and the *Manchester Guardian*, which was particularly incensed by the statement that Spen Valley revealed Liberalism in its death-throes. There was a general demand for further detail and explanation. There was a volley of questions. Mr. Asquith protested that the Lord Chancellor "was not a party himself and could not form one. If he is going to run the same Coalition team under a more high-sounding title, he is doomed to failure".

Lord Ampthill observed "that it was a source of gratification 'that so eminent a statesman' as Lord Birkenhead should have recognised the need for a National Party", but asked what the principles were on which such a party would base its policy. He added that, far from indicating a solid foundation for his party, Lord Birkenhead only said that it was to consist of those who would support Mr. Lloyd George against Labour. "That", he said, "is merely a plan of naked opportunism. . . . Lord Birkenhead puts the cart before the horse. The first thing to do is to form your party: then let the party choose its own leader."

In a second article of January 25, 1920, Lord Birkenhead elaborated his suggestions for the formation of a definite National Party to replace the Coalition. He said that he had no doubt that, if a plebiscite of the nation was taken at the moment to determine who should become Prime Minister for the next five years, the choice would fall upon Mr. Lloyd George.

"But if this be true, how ought the Coalition to set its house in order so that it may compete on equal terms with its competitors? As a fighting force in the constituencies it is, what every Coalition in English history has always been,—it is invertebrate. It is ineffective in attack—it is unconvincing for the purposes of defence. It lets every case go by default. Workers in the constituencies find it hard to make the idea of a Coalition personal or real, in the sense of a party on whose behalf they may labour as they have laboured for their several parties in the past."

He believed that this condition of affairs constituted a grave menace to the State, that the Labour Party was infinitely less united in its fundamental principles than the Coalition, that its extreme members on the Left desired the subversion of the existing order of society, that the party was only united for the purposes of attack, and would certainly be able to combine sufficiently to carry out schemes of Socialism which would, within a year, rupture the whole fabric of British credit. He concluded:

"The formation of the National Party of the future may easily be postponed. It may be postponed too long: it may be called a National Party, a Constitutional Party, or a People's Party: by whatever name it be called, all those who have criticised me, except those

who belong to the Socialist Party, will within five years—whether in office or opposition—find themselves, as I shall, among the roll of its members . . .”

Lord Birkenhead defined the policy of his proposed new party in a third article, published on February 1, 1920. It would stand for

“reform, not revolution, and individual liberty rather than Government control. If you start to reform society while leaving facts and human nature the same, you will end by finding out that the new order in the end bears a resemblance almost uncanny to the old, though it may be labelled in a different way”.

He made special reference to the urgent question of Ireland which “makes difficulties at home, in America and in the Dominions”. Here he would

“abide firmly by the three principles laid down by the Prime Minister in his recent speech on Ireland. First, that Southern Ireland must no longer be denied self-government; second, that the solid anti-Home Rule population of Ulster must not be forced under a Dublin Parliament against its will; and third, that the secession of Ireland or any part of Ireland from the British Empire must be resisted to the end.”

While the reception accorded to the Lord Chancellor's articles by the Coalition Press was generally favourable, it would be wrong to suppose that his proposal was welcomed by most of his Conservative colleagues. It was still less welcomed by the party headquarters. We learn from the recent biography of Lord Birkenhead's old Liverpool friend and mentor, Sir Archibald Salvidge, that when at the end of February 1920 he supported the proposal for a “Constitutional Reform Party” in the Press, he received a most discouraging comment from Sir George (afterwards Lord) Younger, the chief Conservative party organiser. Mr. Bonar Law had given Salvidge the impression that “he was enthusiastic for fusion provided that it did not entail any appreciable split in our party”. Sir George Younger, however, was “not very hopeful about being able to secure any immediate success in the direction of fusion”, precisely because he feared a split. Sir George confessed that he found it hard to induce the local Conservative associations to support Coalition Liberal candidates, “largely owing to Unionist luke-

warmness where people have been political enemies for generations". As the months went by, Conservative opposition, led by Sir Arthur Steel-Maitland, to the idea of fusion was intensified; far from seeking to unite Conservatives and Liberals more closely, Sir Arthur insisted on raising the cry of Tariff Reform, at the meeting of the National Union of Conservative Associations at Birmingham in June, and carried his point by a small majority. It was by now clear that the Lord Chancellor's proposal was impracticable for the time being. The old party differences that he had sought to extinguish were reviving in full strength, and already one could foresee the revolt against Mr. Lloyd George that was to bring the Coalition to an end in October 1922. For a practical statesman like Lord Birkenhead the problem was how to postpone the break and to avert its worst consequences. Such was his task for the next two uneasy years.

In the House of Lords the Lord Chancellor continued to make his presence felt. He took advantage of a protest raised by Lord Selborne on February 26, 1920, against the Prime Minister's dealings with trade union leaders to insist that the Government must sympathise with genuine labour grievances.

"It was using the language of insanity to say that, at a time when in the twelvemonth succeeding the war the whole fabric of our industry seemed as if it were to totter before the menace of industrial unrest, the Government were not to see the representatives of a body who, like themselves, consisted of patriotic Englishmen and who in the main desired to maintain our existing Constitution."

He declared that Ministers had served the public welfare by discussing industrial matters with the trade union leaders, especially those who represented the miners and the railwaymen. "It was impossible to sit with five or six men representing the Labour Party without correcting and modifying one's views. He had certainly corrected and modified many of his own views." Yet he declared at the same time that there was an "unbridgeable gulf" between the Labour Party and the Coalition, which stood for private enterprise against nationalisation and bureaucracy. Incidentally Lord Birkenhead twitted Lord Haldane for his benevolent patronage of the Labour Party and remarked that "he would rejoice to see one so experienced and reliable on the Woolsack when the Labour Party held office". The House

rocked with laughter at the jest. Their Lordships and the speaker little thought that within four years the jesting forecast would be fulfilled.

On Wednesday, March 24, 1920, Lord Birkenhead made the finest speech of his life in the debate on the Matrimonial Causes Bill. The House had not made up its mind how it would vote. His eloquence and unusual passion thrust the Bill through its second reading by a decisive vote of 93 against 45. He had long detested the barbarous inequalities of the Divorce Laws, and for more than an hour he held the unbroken and surprised attention of the House of Lords in a speech of passionate eloquence and power. It is uncertain whether the fate of the Bill was in sufficient doubt to require such a remarkable effort of advocacy. Lord Buckmaster's speech on moving the second reading a fortnight before had, as some thought, ensured the passage of the Bill through the Lords, but the Roman Catholic Peers and the Bishops, supported by a lay following of strict Anglicans, had organised a strong resistance, and the Lord Chancellor took no chances. It was his remarkable effort which bore down the Opposition, and broke their argument to pieces. The *Observer* said of his speech :

“ In its massive marshalling of facts, its force of good judgment with right feeling, and its generous revolt against ‘ the horrible mass of suffering ’ caused by existing conditions, it was the greatest speech Lord Birkenhead ever made.” The Bench of Bishops was in unbending opposition, and both Archbishops added their voices to the debate. Yet it was significant that even that fixed corner stone of ecclesiastical doctrine, the cruel and mediaeval concept of the indissolubility of marriage, was shaken by the current of opinion in favour of divorce law reform, as both Primates confessed themselves willing to accept cheaper divorce, the equality of sex conditions, and increased grounds for declaring marriages null—an enormous advance on rigid theory.

The House of Lords took the lead in pressing for this urgent measure of reform, and the credit may be divided between Lord Buckmaster and Lord Birkenhead. Lord Birkenhead made it plain at the outset of his speech that his views on the question were those of the majority of the Gorell Commission of 1913. At the root of the matter this difference lay : there were those

who thought marriage indissoluble for any reason, and those who held the opposite view. That was the only controversy on principle; whether marriage, which was a sacrament, should be dissolved for any reason, or whether it should not. Those who opposed the Bill would, if they had had the power, have restored the law to the condition in which it was in over three hundred years ago, and have decreed that for no reason whatever should marriage be dissolved. He reminded the House how in 1857 the Act "removed a jurisdiction from the Ecclesiastical Courts which they were very ill fitted to discharge". "I will pass by", he continued, "the conjugal eccentricities of Henry VIII with the observation that they met with a good deal of indulgence from the ecclesiastics of that day."

By the end of the seventeenth century it was recognised that by means of a private Act of Parliament divorce ought to be obtainable on the ground of adultery. After this, he said, the principle disappeared that marriage was not and ought not to be indissoluble: it was exorcised from our institutions 350 years ago. "I say that those who take and attempt to advocate the other view, do not live in this world. Their arguments are the whisperings of the abandoned superstitions of the Middle Ages."

The vast majority in both Houses, and in the country, was agreed that on some grounds or other marriage ought not to be indissoluble. That meant the definite rejection of the ecclesiastical view. Lord Birkenhead accepted the principle laid down by the majority of the Royal Commission, that marriage ought to be dissoluble upon any grounds which frustrated what by universal admission were the fundamental purposes of marriage. That, however, was not the ecclesiastical case, which was that, although marriage was not otherwise dissoluble, it might nevertheless be dissolved in cases where adultery had been committed.

"I, my Lords, can only express my amazement that men of saintly lives, men of affairs, men whose opinions and experience we respect, should have concentrated upon adultery as the one circumstance which ought to afford relief from the marriage tie. Adultery is a breach of the carnal obligations of marriage. Insistence upon the duties of continence and chastity is important; it is vital to society. But I have always taken the view that that aspect of marriage was exaggerated and somewhat crudely exaggerated in the Marriage Service. I am concerned today to make this point by which I will stand or fall,

that the moral and spiritual sides of marriage are incomparably more important than the physical side. . . . If you think of all that marriage means 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 that bond which nature in its ingenious telepathy has contrived to secure and render agreeable, the perpetuation of the species.”

Lord Birkenhead added that he doubted whether there was a single member of the House who believed that the physical side of marriage was the highest, yet all those who opposed the Bill involved themselves in that position. If they said that the physical side of marriage was not the highest, then they were committed to a ridiculous paradox, in that they assented to divorce for a breach of the less important obligation of marriage, and denied divorce for a breach of the more important obligation.

He then came to the grounds which were suggested by the Majority of the Commission as justifying divorce. The first was wilful desertion for three years, and Lord Birkenhead paused to inquire of those who opposed the Bill whether or not they considered it a graver violation of the obligation of marriage that a man or woman should wilfully desert his wife or her husband for three years, defying every obligation which they swore in the Marriage Service, than yield to one fugitive physical temptation. Such cases were greatly aggravated by the war. There were many women who had married overseas soldiers and been deserted by them. The poorer among them had no means of tracing their husbands. A rich woman whose husband had abandoned her could trace his whereabouts and probably prove that adultery which, coupled with his desertion, would give her freedom.

“What is the remedy open to a poor woman who, when she married, gave up the pitiful pursuit by which she made her living until her marriage, and, relying on the marriage, is left penniless, and is left for the whole of her life unable to identify her husband, unable to obtain the slightest relief from the law? She is neither wife nor widow; she has a cold hearthstone; she has fatherless children for the rest of her life. . . .

“In the cases which have come to me within the last fortnight, if I had time to deal with them I could give your Lordships particulars

which would bring tears to your eyes. What is a young woman of 22 to do who is, for the rest of her life, with no hope of alleviating the future, with a fugitive husband whom she never can identify, while the law says to her plainly, finally and brutally: 'We will do nothing for you.' It is said, 'You have open to you judicial separation.' Choosing my words advisedly and being prepared with chapter and verse of a hundred cases even at a date when the Royal Commission reported, and in a thousand cases since, I say that I can prove that this state of judicial separation—admittedly the only alternative—is a hot-bed of vice.

"We are told that such a woman as I have described is to remain chaste. I have only to observe that for two thousand years human nature has resisted, in the warmth of youth, these cold admonitions of the cloisters, that I do not believe that the Supreme Being has set a standard which two thousand years of Christian experience has shown that human nature in its exuberant prime cannot support."

He went on to say that in case after case the result was that new connections were formed, that in the overwhelming majority of cases the deserted party enters into adulterous relations with others, either promiscuous or constant. Another disastrous consequence followed. Owing to their natural dislike to bringing illegitimate children into the world, thousands of English people who should have been swelling the child life of the country were forced to sterilise their unions, on account of the oppressive system under which they lived.

"If this alone were the argument which was presented under this head it would be a formidable one. The thousands of people now living their lives in circumstances in which they can see no gleam of hope come today to your Lordships to ask for mercy and for justice." He passed to the case of lunacy and urged the necessity for making confinement for five years under the Lunacy Law ground for divorce. This case applied to nearly forty thousand people who at the moment were tied to lunatics. He cited a recent and poignant case which had shocked England:

"One tragic case is within the knowledge of your Lordships. I mention no names, nor should I have even mentioned the case had not the noble lord affected made it public in the courts. But there was the case of the bridegroom who discovered, I think at the church door, that his wife was mentally affected. Some twenty or thirty years ago that discovery was made. The whole happiness of his life was wrecked and irretrievably destroyed, and the promise of a noble



house was extinguished for ever. One day I suspect men will wonder how we sustain for so long a system so savage in its conception and so devastating in its consequences."

Turning to the question of habitual drunkenness as a ground for divorce, he said that it was proposed that after a separation order had been made for drunkenness, and when drunkenness continued for three years after the order, it should be made a ground for divorce. The Majority of the Royal Commission had pointed out that drunkenness meant more misery for the sober party and the children than any other in the list of grave causes. He spoke movingly of the terrible disillusionment of a man or woman who married, "like children blinded with love", when they found that the partner of their life was an incurable drunkard and an unsexed beast.

"Those who have spoken in opposition to the present proposal say with the best motives but with malignant results: 'We deny you any hope in this world. Though an honest man loves you, sin shall be the price of your union, and bastardy shall be the fate of your children.' I cannot and do not believe that society, as it is at present constituted, will for long acquiesce in a conclusion so merciless."

He came to the end of the speech. The House had listened in tense and startled silence for an hour and ten minutes to this remarkable effort. He concluded earnestly:

"It may well be, if your Lordships send down this Bill, that in another place it will meet with a volume of support which will, at long last, remove this great blot from our civilisation. I would most earnestly implore your Lordships to be the pioneers in this great reform, and if it should prove so to be, I believe that daily and nightly your Lordships' names will be breathed with unspeakable gratitude by thousands of the most unhappy of your fellow subjects; and I am sure of this, that for generations yet to be, you will be acclaimed for the wisdom and humanity of the decision taken tonight."

It remains to be said that, though the Bill passed through all its stages in the Upper House, it was stifled in the House of Commons, and that to this day the reforms so earnestly and eloquently advocated by Lord Birkenhead in 1920 are still unrealised. A well-known High Churchman, the late Canon T. A. Lacey of Worcester, ventured to rebuke *The Times* for commending the speech and concluded his letter with the remark that

“ the Lord Chancellor may learn to confine himself to those legal questions which he thoroughly understands, leaving moral and spiritual and physical questions to other minds ”. He drew upon himself a severe castigation. The Canon was, the Lord Chancellor wrote, “ infinitely more sacerdotal than the great leader of his Church ”. “ If there were many in the bosom of the Church like Canon Lacey, some of us would recall the lines, in this country happily almost forgotten—

‘ Nos prêtres ne sont point ce qu’un vain peuple pense,  
Notre crédulité fait toute leur science.’ ”

Later in the session, on July 19, the Lord Chancellor had an anxious moment in repelling an attack on the Government for its treatment of General Dyer. The General had repressed an incipient insurrection at Amritsar, but had been censured by a Commission for the undue severity of his measures and removed from his command. His case excited great public sympathy in England, where he was thought to have been sacrificed to the Indian Nationalist politicians. Lord Finlay raised the question in the House of Lords in a very able and bitter speech. But the Lord Chancellor in a carefully phrased and conciliatory reply maintained that General Dyer had been dealt with most leniently ; to be put on half-pay was “ the mildest disciplinary treatment known to the Army ”. If his speech did not appease General Dyer’s many friends, it satisfied most people that no injustice had been done.

## X

### *THE IRISH TREATY (1921)*

**A**T the election of 1918 Irish Representation passed for the first time into the hands of Sinn Fein. The Nationalist Party disintegrated and their place was taken by eighty Sinn Fein members consumed with hatred of England, their objective a Republic, their method stealthy terror. The group at once renounced representation in the English House of Commons. On January 21, 1919, Dail Eireann, consisting of the members elected to the British Parliament at the General Election, met and issued a Declaration of Independence. The same body, a few days later, elected a Cabinet and gradually built up an administration in rivalry with that of the British Government. The English Parliament was preoccupied with its great schemes of post-war reconstruction, and this significant event passed almost unnoticed. It required the summer of 1919 with its record of assassination of British police and soldiers, ambushes and sudden death, to remind English legislators that the Irish problem still awaited a solution, and was emerging in a new and more bloody form. These murders, so cold-blooded, so un-English, provoked reprisals on an equal scale from the soldiers and the police.

In December 1920 the Home Rule Act set up two Parliaments in Ireland, and authorised a council of delegations of twenty each from the Parliaments which might replace the council by an all-Ireland Parliament. Furthermore, Northern and Southern Ireland should each have an executive council. Elections under this Act were held in May 1921. Southern Ireland refused to recognise the Act but, characteristically, took advantage of its electoral machinery to elect a new "Dail".

Lord Birkenhead had already spoken in the House of Lords on May 6, 1920, on a motion by Lord Askwith, who described the reign of terror in Southern Ireland. Lords Denbigh and

MacDonnell had complained that Mr. Lloyd George had shirked the conclusions of the Irish Bill, now before the Commons, while Lord Midleton had stated that the Bill pleased no one in Ireland.

The Lord Chancellor's view was that the situation was bad, and that MacDonnell's suggestion of another convention was not helpful. He knew that the Convention of 1917 would fail because Sinn Fein rejected it knowing that it would not give them the Separation which it was their inalienable purpose to achieve. "We are approached", he said, "by a demand to which in no conceivable circumstances can we give our sanction—in no conceivable circumstances." He recalled the U.S. Civil War and the Boer War.

"Having resisted the weight of the German Empire, having inspired (as I say here plainly we did inspire) the spirit and strength of the resistance to that menace, does anyone really believe that we are going to give way to threats, that we are going to destroy this Empire when we have no longer the strategical unit which can contemplate struggle against any enemy? That has not been the character of this people through history. It will not be the character of the people of this country in the years, however grave soever they may be, that lie in front of us."

Six days later, on May 12, 1920, on a motion by Lord Salisbury referring to the Irish rebellion, the Lord Chancellor admitted the facts, said that the Loyalists could not all be protected, and said that reinforcements had been, and were being sent; in a word, that the Government were determined to restore law and order in Ireland.

On July 1 Lord Monteaigle introduced a Dominion of Ireland Bill, which would allow an elected Irish Constitutional Assembly to settle details, grant Dominion Status and reserve defence. The Lord Chancellor strongly attacked the Bill on the grounds that it expressly abrogated the supremacy of the United Kingdom Parliament, especially in relation to foreign affairs, and empowered the Irish Government to enter into independent commercial treaties with foreign countries, and provided for the representation of Ireland on Imperial Councils and in the League of Nations.

"We have only to cast our eyes round Ireland today to see what is going on there, and to ask whether anybody can come forward who retains any reputation for responsibility and say that powers such as

these shall be given at this time of all others to an Ireland constituted as we know Ireland today."

He considered that the Government's Bill, for establishing two Parliaments, was different, and would enable them at any time to suspend the Southern Parliament, and that Lord Montea-  
gle's proposal to withdraw all troops was impossible. Lord Montea-  
gle's suggestion was : to give up the policy of coercion and militarism. The only possible retort was : "Let the assassins begin".

The next debate in the Lords on Irish affairs took place on August 5, 1920, a motion by the Duke of Northumberland calling attention to the revolutionary movement in Ireland. The Lord Chancellor agreed with Lord Middleton that coercion must be accompanied by conciliation.

"I speak quite plainly when I say that in my judgment our capacity to maintain the security and integrity of the Empire, and therefore our capacity to retain all the glory, all the security, all the material advantages of which this Treaty offers us a prospect—all these will be lost if we are unable to make it plain that we are the masters of our own house in Ireland, that we will again restore and make effective the King's Courts, and that we will bring murderers and assassins to justice."

He appealed at the end of his speech for more young officers to serve in Ireland, saying : "There is no limit to the number we will take."

On August 9 the Lord Chancellor moved the second reading of the Restoration of Order in Ireland Bill—to counter intimidation of magistrates and juries, and to check the rebel courts. The Bill allowed the Government to make regulations under the Defence of the Realm Act for courts-martial and courts of summary jurisdiction, and to withhold grants from recalcitrant local bodies. He said at the close that the Government were ready to listen to any representative persons when the Government had repressed the violent party.

On October 20, 1920, Lord Curzon informed the House of Lords that the Lord Chancellor was ill and had had to go abroad. Lord Crewe observed : "We are tempted to congratulate ourselves at being spared the presence of so formidable an antagonist, yet we recognise his wide grasp of many subjects and the vivid

quality of the speeches by which he illustrates those subjects." Lord Salisbury said: "I am only voicing the opinions of all your Lordships when I say that his great ability, courtesy and industry have done an immense lot to improve the efficiency and success of the legislative work of your Lordships' House."

When the Lord Chancellor returned from abroad Lord Curzon wrote on November 14 to welcome him home.

1 CARLTON HOUSE TERRACE.

Nov. 14<sup>th</sup>, 1920.

DEAR F. E.,—

I fancy you are either back or nearing home. In either case a warm welcome, and I hope we shall all find you in more than your old form, and with renewed strength. The Irish Bill is to be taken the week after this. In your absence I took two Irish discussions and got along as best I could. Crawford has been mastering the details of the Home Rule Bill, and Peel has been studying the financial clauses. The world has been shaken by the revelations of the latest trio of literary sensationalists: Margot, Repington, The Man with the Duster: and we look at each other and wonder with a shudder who is to be the next artist and who the next victim.

On November 20, Carson wrote an important letter saying that he and his friends in Ulster had decided to support the Bill and work it loyally as the Home Rule Act could not be undone.

5 ETON PLACE, S.W.

Nov. 20<sup>th</sup>, 1920.

MY DEAR LORD CHANCELLOR,

With reference to the Government of Ireland Bill which will be before the House of Lords next week, I observe that it is frequently stated that no one in Ireland wants the Bill passed into Law. May I say, with the full consent of all my colleagues in Ulster, that this is a fallacy. It is quite true that we are all of opinion that to maintain the Union is the soundest policy, but we recognise that under the existing circumstances, and especially having regard to the fact that the Act of 1914 is upon the Statute Book, it is not possible to secure that position as it at present stands. Ulster wants peace, and above all things to be removed from the arena of party politics in the Imperial Parliament, and we therefore have made up our minds that in the

interests of Ireland, Great Britain, and the Empire, the best and only solution of the question is to accept the present Bill and to endeavour to work it loyally.

I remain, Sincerely yours,  
EDWARD CARSON.

On November 23 the Lord Chancellor moved the second reading of the Government of Ireland Bill. The day before, he had read the report of the murders of fourteen officers in Dublin on Sunday, November 21, 1920. At the beginning of his speech he referred to this tragedy and said :

“ I should be blind indeed if I ignored the atmosphere of emotion and indignation in which all of us at this moment must approach the consideration of this question, and it will be necessary for us later to ask ourselves, as we frequently had to ask ourselves during the war, the difficult question : What is the true perspective which must be assigned to the appalling crimes to which the attention of the country was directed yesterday ? ”

The Lord Chancellor's speech presented the long and complex measure with exemplary clarity, explaining its provisions in detail from the beginning, the establishment of Parliaments for both Northern and Southern Ireland, and of the Council of Ireland of twenty representatives from each Parliament, with a President to be appointed by the King—a Council to which the two Parliaments might, if they chose, delegate their powers, and make it a united Irish Parliament. If either Parliament did not function, then there was to be Crown Colony government and forty-six members were to go to Westminster. Customs and income tax were reserved to the Imperial Parliament. Ireland was to contribute eighteen millions a year to Imperial liabilities. These were the main features of the Bill. It had been said that Ireland did not want the Bill, and he made a good point by reading out the last sentence of the above letter from Sir Edward Carson.

The Lord Chancellor went on to say that he would probably be asked what would happen if the Sinn Feiners took the oath, and then declared a Republic. He said that such a desperate course was most improbable.

“ If they did, the existence of that Irish Parliament would be brought to an end by any means that might be appropriate and necessary. It might conceivably involve the conquest of the South of Ireland. . . .

"All these things are a matter of alternatives. We are confronted with the alternative of having to some extent cleared our conscience and brought ourselves into relation with the spirit of the day, and the alternative of going on dealing with Ireland in its present condition by our present means."

He went on to deal with the critics, and Lord Midleton, who did not think that the Bill went sufficiently far in the direction of strengthening the safeguards of the Unionists of Southern Ireland. Lord Midleton thought that Ulster ought not to be allowed at this moment to set up a separate Parliament, and that the Ulster members should be compelled to remain at Westminster. "Surely", said the Lord Chancellor, "this is a matter which concerns, not the Southern Unionists, but the Ulster representatives and people. The terrorists are the real Opponents of this Bill. What they wish for is revolutionary secession, and I still say they are being beaten all the time."

The only alternative to the present proposal was to repeal the Home Rule Act of 1914, but the Government would not make itself responsible for doing so. Lord Grey suggested that they should carry on for two years and then leave the Irish to settle their own quarrels.

"After they have failed to agree, does he really mean that we in this country, with all that Ireland counts for, tactically and strategically, are to wipe our hands of it, and withdraw the police and the military forces there? What would happen if we did that? I, for one, believe that at once the South of Ireland would be at the throat of the North and we should involve ourselves in the tragic consequences of a Civil War, the blame for which would lie upon us."

Up to this point the long and exhaustive speech had been carefully prepared and very restrained. The portion which reviewed the provisions of the Bill was, indeed, read from full notes, but when the Lord Chancellor came to urge the expediency of carrying through the long postponed policy of reconciliation, he cast off restraint, and rose to heights of real eloquence:

"I believe that these proposals are the most promising that have been brought forward up to the present. I am cautious in anticipation: I am not rash enough to make a flippant prediction in regard



to the future, but I do not, and I will not, wholly dismiss the dream that, instructed, or if you will, constrained by the new orientation of this new world, we, who are so soon to give a solemn vote 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. Ah, my lords, if this should happen, how immense would be our contribution to the stability and greatness of these dominions!

"If we, in our day, should be so happy as to succeed, history will record of our generation that we inherited indeed a mighty Empire, but that it was menaced abroad by a powerful and most resolute enemy, while at home it was enfeebled at its very heart 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 recaptured 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 or hate, so captivating in its nobler moods."

He sat down amid loud cheers, having spoken for nearly two hours. Mr. Lloyd George, who had listened to the speech, tore the corner off an order paper and scribbled on it: "A very fine effort. Made a deep impression on the House. Congratulations. D. L. G."

The Lord Chancellor had again achieved a great personal triumph in the House of Lords. The *Observer* said of his speech:

"The voting was a fair reflection of the run of the debate. The Lord Chancellor's opening speech was a masterpiece. The case for the Bill could not have been more lucidly, more moderately, or more eloquently put. His exposition was the dominating influence in all that followed."

And again:

"Lord Birkenhead carried the Bill with the Lords, almost, it might be said, singlehanded. There are few men in Parliament today whose contributions to debate come within the definition of oratory. He certainly is one of the few. His speech had cogency and discrimination. It will rank as one of the great Home Rule speeches. He enjoys in the House a personal ascendancy equal to that of the greatest among his predecessors."

Lord Curzon wrote to him on December 25 :

HACKWOOD, BASINGSTOKE.

Dec. 25<sup>th</sup>, 1920.

MY DEAR F. E.,—

Now that the labours of the session are over, you will, I hope, allow me to send you a line of mingled admiration and gratitude for the extreme (and sometimes audacious) ability with which you have carried through the Irish and other legislation of the latter part of the year. The Irish Bill in particular is your triumph, and it is always a delight to me, as it is to all your friends, to watch your easy and supreme mastery over every situation as it arises.

With all the wishes of the season,

I am, Yours ever,

CURZON.

Mr. Churchill, writing of the result of the Act, said :

“The Bill of 1920 was a decisive turning point in the history of the two islands. In important effects it was tantamount to the repeal of the Act of Union after 120 years of friction. . . . Ulster, or rather its predominantly Protestant counties, became a separate entity clothed with constitutional forms possessing all the organs of government and administration, including police and the capacity of self-defence for the purposes of internal order. From that moment the position of Ulster became unassailable. . . . Never again could any British party contemplate putting pressure upon them to part with the constitution they had so reluctantly accepted.”

On February 22, 1921, the Lord Chancellor again spoke on a motion by the Archbishop of Canterbury, calling attention to the outrages imputed to the Black and Tans in Ireland, and condemning reprisals. The motion was supported by Lord Buckmaster in an angry speech, and by Lord Denbigh and the Bishop of Winchester. The Lord Chancellor began :

“In listening, I fear not for the last time, to one of these painful and recurrent debates upon Irish affairs, I am conscious, I confess, to a higher degree than I have experienced before, of a feeling of suspense and unreality. As I listened to the long series of speeches which have been made in the debates, I asked myself the question : What would any foreigner introduced into this Chamber tonight, having listened to the pictures which have been drawn presumably as faithful illustra-

tions of what is taking place in Ireland, have imagined in his own mind as that which is taking place? He would have pictured to himself the evil and murderous triumph of an unscrupulous and uncivilised power and he would have said: 'This is the end of the greatness and the civilisation of the British Empire.' I have listened to the whole of the debate, and I have not heard one voice raised to correct a perspective which is as cruel as it is untrue, and which has done, as I will show before I have finished, the greatest injustice to a body of men, who, take them for all in all, are as brave servants of the Crown as can be found in the disciplined forces of the Empire, and men to whom we, every one of us, are under an immense debt of obligation for that which they have done."

He went on to deal faithfully with the speakers, beginning with the Archbishop of Canterbury:

"I agree with what the most reverend primate said, at least I agree if I completely understand him, that you will not cast out the devil by calling in devils, respectfully and reverently agree, but it is also most unhappily true that you will not cure the mischiefs that exist in Ireland by uttering the sublime admonitions of the Sermon on the Mount, and I do not believe that there is one right reverend prelate who listens to me on these benches who would not be bold enough to rise in his place and offer the view that without the assertion of force—force in its most extreme and vigorous application—you can cure the mischiefs by which we are assailed in Ireland today."

On March 17 Mr. Bonar Law resigned from the Cabinet, and Sir Austen Chamberlain was elected by the Unionist Party as leader, and appointed by Mr. Lloyd George to lead the House.

Meanwhile with the coming of April it was beginning to dawn on Mr. Lloyd George that the Irish resistance was a very real force which had to be met by other methods than force. The struggle in Ireland was proceeding over a widening front. Murder spread. The reprisals of the Black and Tans darkened the conflict and inflamed the hatred. Henry Wilson was demanding martial law in the South. Authorised reprisals succeeded the wild retaliation of the Black and Tans. The odious guerilla war dragged on, and it became evident that our course lay one way of two—to crush the rebellion by force of arms, or to come to terms with Sinn Fein. Macready and Wilson reported that the troops in Ireland were in no

condition to support another winter. Soothed up till now by the reports of Sir Hamar Greenwood, the Prime Minister came to realise that the war was still far from a conclusion, while efforts at conciliation in the South had been far from successful. But Mr. Lloyd George's mind had not yet been driven to see the necessity for serious concession. In a Cabinet debate Mr. Churchill, Sir Austen Chamberlain and Lord Birkenhead all anticipated him in advocating "the fairest offer combined with the most drastic threats".<sup>1</sup> Mr. Lloyd George was still hesitating at the prospect of treating with men like Collins and Brugha, whose names were then generally associated in England with murder and outrage. Also it was clearly dangerous to the highest degree for him to negotiate with them without some indication that his proposals might be welcome.

In April the first emissary arrived in Dublin in the person of Lord Derby, travelling incognito as "Mr. Edwards". De Valera rather naturally declined to regard him as a serious emissary, or to discuss any important matters with him.

On June 21 the King and Queen visited Belfast, and the King gave the following message to the Northern Parliament on June 22 :

"I appeal to all Irishmen to pause, to stretch out the hand of forbearance and conciliation, to forgive and forget, and to join in making for the land they love a new era of peace, contentment and goodwill."

It is now recognised that this appeal did a great deal to ease the situation, and to dissipate the general gloom. To those Ulster Unionists who regarded the new order which had been established among them with fear and distrust, the Royal visit gave the assurance that their position in the Empire had been dignified rather than impaired. Also it converted the Irish question from a political into a national issue. Henceforward the new state which that day was inaugurated at Belfast was a separate entity, though still part of the United Kingdom.

The day before, June 21, a further debate had taken place in the Lords on Irish affairs, in which the atmosphere was clouded with gloom and apprehension, which the speech of the Lord Chancellor did little to allay. He was resisting on behalf of the Government a motion by Lord Donoughmore

<sup>1</sup> Churchill : *The World Crisis : The Aftermath.*

asking the Government to expand the Act of 1920 in the direction of fiscal autonomy, and "to propose and authorise negotiations with Ireland". The Government narrowly escaped defeat at the end of the debate. A militant speech by Lord Salisbury was followed by a moving appeal from Lord Desart, which contained the sentence: "No man or woman is now happy in Ireland." There followed an arresting speech from Lord Dunraven who, with a memory extending to the Fenian Insurrection sixty years ago, sadly told the House that he had never seen anything in the least degree to approach the present position. In his opinion deliverance could only come from an immediate amending Act.

There was a general hope that the Lord Chancellor might show a candle in the gloom. The Chamber was set for a great occasion, more crowded than it had been for months, with forty peeresses assembled in the side galleries. But his survey was as melancholy as those of the Peers who had preceded him, and made no promise of a peaceful settlement. Further force if necessary and the rejection of fiscal autonomy on the grounds that it would enable Ireland to erect a tariff wall against England and repudiate its share in the national debt formed the text of his speech. The demand was for independence and a republic: "My Lords," he said, "we are toying with ideas, we are chloroforming ourselves, we are shutting our eyes to the real facts of the situation." The difficulty of finding any encouragement was so great that in attempting it his usual clarity deserted him.

"If I am asked, is there no hope? I reply that while none can be said to exist now or for weeks or months, perhaps for long months, we may nevertheless discover some assurance in the history of our long relations with Ireland and in the desperate nature of the present position. If I am right in saying that those who are carrying on the war in Ireland will be content with nothing less than that, indeed which they have repeatedly avowed, namely an independent republic for Ireland—this is certain, that that is a claim which it will never be possible for this country even to consider, no matter how long the struggle may last."

He ended a speech which, although followed with close attention, had bitterly disappointed the House, with the significant words:

“If we should be forced to the melancholy conclusion that by force and force alone can this mischief be extirpated or prevented, however sorrowfully we accept it we shall not hesitate logically and completely to act upon it.”

On June 24 the Prime Minister invited Mr. de Valera and Sir James Craig to a conference in London to attempt to end the conflict. Mr. Churchill, writing of this sudden change of policy in *The World Crisis: The Aftermath*, admitted that “No British Government in modern times has ever appeared to make so sudden and complete reversal of policy”, and it will be as well to examine here the manner in which Lord Birkenhead himself justified the new policy of negotiation. Replying on August 10 in the Lords to a question by the Marquis of Salisbury, he made a statement as to the grounds upon which the Government decided to enter into negotiations with the Sinn Fein leaders in Ireland. He said that the response to the King’s speech at Belfast was a remarkable one, and it became evident that the situation was altered in a sense that the Government believed to be vital. It was no longer possible to maintain that there were not in Ireland men of the highest consequence and importance who were willing to treat with the Government. To have refused to have entered into negotiations would have meant that we were committed for a period indefinite in duration to a continuance of war, and to a campaign on a much larger scale involving the employment of a very much greater number of men than historically had ever been employed in Ireland in the suppression of a rebellion. He added that it was obvious that the strength of England, if exercised with the necessary vigour and sacrifices, could put an end to the rebellion, but it would leave a long legacy of bitterness and unhappiness, and in these circumstances the Government reached the decision that they would be doing a wrong and indefensible thing if they refused to hold any negotiations.

We should pause here to consider the immense decision which the Lord Chancellor had taken. He had jeopardised his position in the Unionist Party, and courted the hatred of many of its members and the odious charge of treachery to a trust. More than any other Minister was he associated with the resistance to Home Rule. He had shared and matched the risks of Carson in 1914. He would gain more than any other minister

from resistance to a settlement, lose more in its advocacy. In this great moment he took a decision which he passionately believed to be right, and it was a decision directly at variance with his own interests, and destructive to many old and valued friendships. From it he never wavered, and from the moment when he appeared as the advocate of negotiations he remained throughout them their most rigid Unionist supporter.

Sir James Craig accepted the invitation, but Mr. de Valera said that it would be first necessary for him to meet the Southern Unionists. Lord Midleton and his colleagues of the South accepted and conferred with Mr. de Valera. General Smuts, in England for the Imperial Conference, had meanwhile visited Dublin and interviewed de Valera and the other leaders. He had already urged on British ministers the vital necessity, in the interests of world peace, of a solution of the Irish question, and he now, with equal earnestness, pleaded with Sinn Fein to accept full Dominion Status for the South and for the present to agree to the exclusion of Ulster.

On July 7 the Prime Minister proposed a truce preliminary to a conference in London, and on the 9th, General Macready and the two liaison officers of Sinn Fein agreed to the terms of an armistice. On the 11th a truce was arranged, and Mr. de Valera came to London to confer with the Prime Minister, accompanied by Mr. Griffith and Mr. Barton. Mr. Lloyd George and Mr. de Valera conferred for the first time in the Cabinet room at 10 Downing Street.

On July 20 Mr. Lloyd George submitted the proposals of the British Government for a settlement to Mr. de Valera. This document defined the limits of English concession, and offered Dominion Status subject to restrictions on defence, trade and debt. On August 10 Mr. de Valera sent a reply refusing Dominion Status, and describing it as "illusory". He did not recognise any true analogy between the Dominions which were distant, and Ireland which was close, and suggested that he might recommend "a treaty of free association with the British Commonwealth Group" if "the allegiance of the present dissenting minority could thus be secured". Mr. Lloyd George replied, insisting upon allegiance to the King and explaining that his proposals in no way impaired Ireland's status as a Dominion,



AT CHARLTON, 1921



AT ST. MORITZ,  
1921-1922





made no claim for further ascendancy over Ireland, and in no way interfered with Irish national ideals.

The Dail had met on August 16, and on August 24 Mr. de Valera sent its reply, a refusal of the offer and a fresh enunciation of the principle of government by the consent of the governed. Simultaneously violent riots broke out in Belfast. An exchange began between Mr. Lloyd George and Mr. de Valera. Lloyd George replied on August 26 to the message of the Dail, but said that there must be no secession. On August 30 de Valera replied, reasserting Ireland's claim to independence, but saying that he would discuss the principle. On September 7, the Cabinet meeting at Inverness, where Mr. Lloyd George had gone on holiday, demanded a more definite reply. Would the Irish confer inside the Empire? On September 14 the Dail appointed plenipotentiaries, but Mr. Lloyd George cancelled the proposed conference because Mr. de Valera, in his covering letter, said that Ireland was a sovereign state. On September 29, after more fencing, the Cabinet decided on a new invitation to a conference on October 11, to see "how the association of Ireland with the Empire can best be reconciled with Irish national aspirations".

It cannot be said that Mr. de Valera at this point treated the situation with the gravity it deserved. On the eve of the Conference he made a statement in which he retreated to his old position: the truce was violated, the boycott on English and Ulster goods sustained. Such was the atmosphere in which the Conference opened on October 11.

The English delegates included the four outstanding statesmen in the country: Mr. Lloyd George, Sir Austen Chamberlain, Lord Birkenhead, and Mr. Winston Churchill, all tried Parliamentarians and practised negotiators. Their numbers were completed by Sir Laming Worthington Evans and Sir Hamar Greenwood. Sir Gordon Hewart appeared as an extra member for reference in legal questions. The Irish delegates consisted of Arthur Griffith, Michael Collins, Barton, Gavan Duffy and Duggan, a group of determined men, but wanting in the experience of the Englishmen. The following dossier of the Irishmen was prepared for the Lord Chancellor to indicate the peculiarities of each member of the other side.

## DEPUTATION.

*Arthur Griffith* (Catholic). "Minister of Foreign Affairs"; Vice-President of the Council of Sinn Fein; journalist; an exponent in Ireland of the dual monarchy idea; will be historical, probably even more so than de Valera; will start somewhere about A.D. 1100 and argue up to the sovereign independent right of every nation; will set out to show that Ireland is a nation; usually silent; not a good speaker, but said to be a fair conversationalist; will be ill at ease; is more clever than de Valera, but not so attractive; is the real power in Sinn Fein.

*Gavan Duffy* (Catholic). "Sinn Fein envoy to Rome"; son of the late Sir Gavan Duffy, Prime Minister of one of the Australian states; practised for about ten years as a solicitor in London; vain and self-sufficient, likes to hear himself talk; will try to score points, even small ones; will attempt arguments in a legal manner.

*Michael Collins* (Catholic). "Minister of Finance"; one of the four men forming the physical force inner circle; was a clerk in the London Guarantee office in Lombard Street; full of physical energy; quick thinker; a Cork man, therefore impetuous and rather excitable; the strongest personality of the party; claims influence which at this juncture will be exercised on the side of moderation; fought in the 1916 rebellion.

*Barton* (Protestant). "Minister of Economics"; cousin of Erskine Childers; held a commission during the war, and, for a time, acted as Military Compensation Officer in Dublin; lost a brother in the war; educated at Rugby and Christchurch; is a substantial farmer; has no outstanding quality.

*Duggan* (Catholic). "Chief liaison officer Sinn Fein"; Solicitor recently admitted; completely under the influence of Michael Collins; fought in the rebellion of 1916; recognises that he is not one of the strong men.

*General.* All the delegates with the exception of Gavan Duffy will be very nervous and ill at ease. They have never been in conference with men of experience before. They are leaders in Dail Eireann, which is a very nondescript assembly. They are absolutely without world experience, and considerable allowance will have to be made on this score. In overcoming their nervousness they may be a bit rude and extravagant in speech.

They recognise their great responsibilities and this, of course, adds to their nervousness.

This thumb-nail sketch was soon found to do far less than justice to the qualities of the Irish delegates. Griffiths, so lightly dismissed, proved resourceful and cool, the motive force behind Sinn Fein, by far the best instructed of the Irishmen, resolute, yet pacific in his intentions. The popular conception of Collins as the instigator of assassins had faded and he was to be acclaimed on his arrival in London as the romantic and gallant leader of a minority cause, the hero of a hundred escapes with a price on his head.

The first session took place on October 11. Mr. Lloyd George cleared the path of all but fundamental issues of settlement by referring all questions of a truce to a committee, and all questions of finance to the Chancellor of the Exchequer and Sir L. Worthington Evans, in conference with Sinn Fein financial experts. Five sessions of the Conference passed. The Irishmen had overcome their initial nervousness and, although little had been achieved, the delegates on each side had grown into a greater understanding of one another. Suddenly an event outside occurred which threatened the whole Conference with disaster. Pope Benedict XV sent to King George a message expressing hopes and prayers for a peaceful settlement. The King replied :

“ I have received the message of your Holiness with much pleasure, and I join in your prayer that the Conference may achieve a permanent settlement of the troubles in Ireland, and may initiate a new era of peace and happiness for my people.”

Meanwhile de Valera interjected a message of his own which for a time seemed likely to paralyse the negotiations.

He wrote that the “ ambiguities ” contained in the reply of King George must not mislead his Holiness into the belief that the people of Ireland owe allegiance to the British King, and that it must not be forgotten that the independence of Ireland had been formally proclaimed.

“ The trouble is between England and Ireland, and its source that the rulers of Britain have endeavoured to impose their will upon Ireland. We long to be at peace and in friendship with the people of Britain, and with other peoples ; but the same constancy through

persecution and martyrdom that has proved our people's attachment to the faith of their Fathers, proves the reality of their attachment to their national freedom and no consideration will ever induce them to abandon it."

The message had applied a violent brake to the progress of the Conference. It was no longer possible to shelve fundamentals. The English attitude towards the vital questions of citizenship within the Empire, and defence at sea, must now be publicly defined. Assurances were anxiously demanded, and to Parliament then in session Mr. Lloyd George gave those assurances on October 31 on a motion by insurgent Unionists. The complaints of the die-hards had become so shrill that Mr. Lloyd George challenged them to open a debate in which he routed the Opposition in a delicate and adroit speech. Mr. de Valera's intervention was particularly happy for the English interest. For the first time the Irish delegates were afforded a glimpse of the strength of English public opinion against any abdication of fundamentals. After the debate of October 31 intelligent opinion was agreed :

(1) that Unionist opinion accepted with whatever natural reluctance the holding of the Conference, and the offer of the greatest measure of self-government compatible with the security of the Empire, and the preservation of the rights of Ulster ;

(2) that if the Unionist malcontents challenged the entry into conference without explicit and previous repudiation of the Irish Republic, they were on false ground, because if the Government had rigidly insisted on such a repudiation, there would have been no conference ;

(3) that as regarded " fundamentals ", there was no change in the English attitude, and there would be no change, and neither Colonel Gretton (Unionist insurgent) nor Mr. Rupert Gwynne could produce any evidence that either the Prime Minister or his Unionist colleagues were meditating surrender on any of these points.

The *tempo* of the Conference was now quickened. No more plenary sessions were held with a full complement of plenipotentiaries and secretaries. Often Lord Birkenhead discussed the main points at issue with Griffith and Collins in meetings which were only formally reported in the newspapers.

The debate of October 31 did not, however, dispel anxiety

for the future of Ulster. It was rumoured that Carson would lead the North again and that Mr. Bonar Law was coquetting with the idea of becoming Prime Minister, as leader of a party which would support Ulster in her refusal of further concessions.

Lord Derby, writing to Lord Birkenhead at the time, was evidently much disturbed at the position as far as it concerned Liverpool, and nervous as to the effect that a settlement might have on the Party. Mr. Bonar Law had given Lord Derby the impression that he might be returning to active politics, and, if so, would join with Ulster in opposing the proposed settlement.

Lord Derby, after explaining that he had talked the matter over with Sir Archibald Salvidge, said that he felt that serious trouble would arise if anything was given to the Free State to which Ulster strongly objected. If this were done, Mr. Bonar Law would apparently lead an attack upon the settlement. While Lord Derby was very anxious to support Lord Birkenhead and his colleagues in a settlement, he foresaw, first of all, how difficult it would be for him to go against Mr. Bonar Law, and, secondly, that a split would affect local politics in Liverpool and district. He told Lord Birkenhead that from conversations he had had with Sir Archibald Salvidge he was convinced that Sir Archibald held the same views.

It became all the more a matter of interest to Lord Derby as the National Union meeting was to be held in Liverpool, with Sir Austen Chamberlain as the principal speaker. Lord Birkenhead then, as we shall see, took the matter up with Sir Archibald Salvidge.

On November 11 Sir James Craig submitted an important memorandum to the Prime Minister with regard to the government of Northern Ireland and the proposed treaty with Sinn Fein. The great difficulties of the situation were apparent. The British Government had put two alternatives before Ulster : (1) To come into an all-Ireland Parliament subject to retaining her present powers and enjoying ample safeguards against coercion from the South. (2) To retain her present Parliament, share England's Imperial burdens in full, and submit herself to a boundary commission which would redraw a frontier as far as possible on sectarian lines.

The Ulster Prime Minister's memorandum cannot be quoted. But it may be said that he reaffirmed Northern Ireland's resolve to remain in the Union, while accepting the separate Government conferred upon her by the Act of 1920. Her area, as defined in that Act, must remain inviolate. If the reserved services entrusted by the Act to a potential Council of Ireland, for which the time had not yet come, were now to be transferred to the Government of Southern Ireland, they might also be transferred to the Government of Northern Ireland.

Meanwhile the time was approaching for the meeting of the National Unionist Association in Liverpool. The substance of the English terms to Ulster were not generally known, but it was recognised that the Government and Sinn Fein had arrived at a tentative agreement, which depended upon the attitude of Ulster. It was also known that the Prime Minister's terms had met with an unfavourable reception from the Ulstermen. We have already seen the attitude of Lord Derby. His anxiety was mirrored in the attitude of Salvidge, who for thirty years had stood square against surrender for Ulster. His unique ascendancy in Liverpool was based upon resistance to Irish Nationalism; if he now supported the Government in a policy which dissatisfied Ulster it appeared that his whole influence in Liverpool would be imperilled. His son has described the depression in which he returned from a visit to Lord Derby on the eve of the National Conference. Salvidge saw nothing for it but to join the die-hards, whom he had consistently opposed since the war, break up the Irish Conference and smash the Coalition. The decision was not yet taken, however, and no overtures had been made by the anti-settlement party. After much anxious thought Salvidge wrote to the Prime Minister, explaining his dilemma, and saying that he proposed to oppose any attempt to use the Liverpool Conference to censure the Government.

Mr. Salvidge describes how the Irish Conference adjourned pending the Liverpool Conference and how, on the Monday night, Archibald Salvidge received a telegram marked "Whitehall—O.H.M.S. Absolute priority" reading: "Am making special and secret journey to see you arriving Adelphi Hotel 9.30 tonight—leave communication there whether you are well enough to come and see me tomorrow morning about 10.30—

if you are not I must come to Hoylake to see you though I do not wish to do so. B.”

Salvidge could not go south owing to illness, but the crisis was so acute that Lord Birkenhead, as representative of the Government, decided to go to him. At the moment Salvidge's attitude was unknown, and his adherence was considered so vital that Lord Birkenhead decided upon a personal and secret visit in order to exert direct influence on Salvidge. Mr. Salvidge describes the remarkable scene which took place at the Adelphi Hotel on Tuesday morning. His father was met in the entrance hall and conducted straight to the room where the Lord Chancellor had slept and breakfasted :

“ As soon as I entered the bedroom where he had been waiting like a caged lion, Birkenhead swung round and pointing a long finger in my direction said : ‘ Give me twenty minutes. Don't interrupt me. Don't argue. Don't raise any point till I have finished. You could not come to the Cabinet, so the Cabinet, or at least its representative, has had to come to you. Under a bond of secrecy which I ask you to give me, I am going to take you briefly through the inside story of the Irish Conference. When I have finished, if you think I have been false to the things you and I have always stood for in this city, tell me so and adopt what course you like. But you must know the whole position first.’

“ Obviously under the impression that I was entirely hostile he put every ounce of his unsurpassed gifts as an advocate into the recital of the Irish negotiations.”

He described to Salvidge how at first he had regarded the Conference as a waste of time ; then things had grown more hopeful until he realised that the Irish delegates were the type of men who, once they pledged their word to a treaty, would keep it, even with their lives. Ulster had been asked to accept the principle of Dominion Home Rule and to consider the safeguards under which the people of the six counties could agree to enter a United Irish Parliament. Ten years ago a formidable opposition to Irish self-government had existed in a Unionist Party in Ireland firmly allied with the Unionist Party in England. Since then, Ulster had retreated to the six-county boundary, a move effected with Ulster's consent. Who could be blamed for looking at the changed aspect of affairs ? If Ulster refused to co-operate in Dominion Home Rule she would



not be coerced, but at any rate she should consider it, and get the best terms possible. He said that he and his colleagues would not agree to any settlement which did not retain the supremacy of the Crown and the Imperial bond, or which did not leave the British Navy the guardian of the seas of England and Ireland. A settlement on those lines was in sight, and only required support at the Liverpool Conference. Would Salvidge help to get that support or shipwreck the impending peace, the alternative to which was war, bitterer and bloodier than ever before between the two people?

He stopped and eyed Salvidge narrowly. Salvidge showed him the papers with the announcements of his attitude, and the two men went on to discuss the amendment which Salvidge was to move, the Lord Chancellor insisting that the Government must have a clear mandate from the Conference for continuing the negotiations.

“He said he realised it was a pretty tough job for me. He was returning to London, but I had to go on living with people who might take years to see that what we were doing was the right thing for all the interests concerned. However, it was destiny. I could not avoid it. It had come to me. And even if it finished us both it would prove ‘not a bad sort of finish’. He had to go then to catch his train. He went straight out into a waiting taxi with his coat collar up, and his hat pulled down over his eyes.”

On November 17 the Conference took place. The result of Salvidge’s courageous attitude was that his name was dragged through the gutters of his native city, and that every wall and sandwich board screamed the gibe “*Salvidging Ulster*” which had adorned the leading article of the *Morning Post*. The “die-hards”, fortified by the leadership of Gretton, appeared in force at the Philharmonic Hall, but clever tactics and a fighting speech by Salvidge moving an amendment, effected their rout, and gave a mandate to the Unionist leaders to continue the negotiations, which was flashed to the Prime Minister anxiously waiting for news in London, and to Mr. Austen Chamberlain, sitting at Knowsley in painful suspense.

On November 25 Mr. Austen Chamberlain sent to the Lord Chancellor a memorandum by Michael Collins on future Anglo-Irish relations. This remarkable document, which foreshadowed

the Statute of Westminster of 1931, was accompanied by a note from Mr. Chamberlain.

11 DOWNING STREET,  
WHITEHALL, S.W.

25/11/21.

MY DEAR F. E.,—

This is extraordinarily interesting though sometimes perverse and sometimes Utopian. Who (outside our six) would guess the name of the writer?

Yours sincerely,  
AUSTEN CHAMBERLAIN.

The memorandum runs :

#### DAIL EIREANN

*Personal and Unofficial.*

Irish delegation of Plenipotentiaries  
Secretariat.

#### *Memorandum by M. C. (draft)*

“For centuries England strove to reduce Ireland to the position of an English province. Irish civilisation was to be blotted out. The Gael was to go. Irish lands were to be given to aliens. Irish industries were to be destroyed. Irish development was to be prevented. Ireland was to be utilised according to the Colonial policy to feed and enrich England.

“A paper in the Record Office dated 1726 says :

“All advantageous projects for commercial gain in any Colony which are truly prejudicial to and inconsistent with the interests of the mother country must be understood to be illegal and the practice of them unwarrantable because they contradict the end for which the colonies had a being.”

“This policy was first applied to all the Colonies, including the American Colonies. But it broke down over the American Colonies. Though they were founded by English Colonists and peopled largely by their descendants, the Colonists were not willing to exist solely for the purpose of feeding and enriching a mother country, and they fought for and won their independence. . . .

“Ireland has never been a British Colony. She has been a separate nation kept subject by a more powerful neighbour for that neighbour's own advantage ; but she has never ceased to fight for her freedom, and now, after centuries of political struggle and armed conflict, she

has won independence. The British people hardly realise the change which has come, and the nature of the new era which is dawning *not only for the two islands but for the whole world.*

"All former phases of the Anglo-Irish struggle—the independence of Grattan's Parliament extorted under pressure of the Irish Volunteers during England's period of danger from Europe and America; the Act of Union revoking England's plighted promises; Home Rule Bills representing merely the exigencies of British party politics—all these are now seen to have been but incidents in the English claim to control Ireland's destinies in England's interests. Forced by circumstances England has now in substance renounced that claim; and the business of the Irish Conference is to shape the form of the partnership or alliance in which two peoples of equal nationhood may be associated for the benefit of both.

"While Anglo-Irish relations have taken on this aspect with an apparent suddenness which is almost bewildering to the ordinary British mind, it happens that at the same moment the relations between Great Britain and the Dominions have, by a different process, reached a stage in which the finding of a solution is almost as urgent in the interests of British security and world peace.

"The history of Ireland as an ancient independent nation which is now at last receiving recognition, is utterly different from that of the Colonies who have gradually outgrown the tutelage of their mother country. . . .

"The Colonies, as full-grown children, are restive under any appearance of parental restraint, though willing to co-operate with the parent on an equal footing in regard to all family affairs.

"Ireland, as a separate nation, would be also restive under any control from the neighbouring nation, but equally willing to co-operate in free association on all matters which would be naturally the *common concern* of two nations living so closely together. The problem on both sides can only be solved by recognising without limitation the complete independence of the several countries, and only on that basis can they all be associated together by ties of co-operation and friendship. The only association which it will be satisfactory to Ireland to enter will be based, not on the present technical legal status of the Dominions, but on the real position they claim, and have in fact secured. . . . It is essential that the present *de facto* position should be recognised *de jure*, and that all its implications as regards sovereignty, allegiance, constitutional independence of the governments should be acknowledged.

"An association on the foregoing conditions would be a novelty in the world. But the world is looking for such a development, and it is necessary if the old world of internecine conflict is to emerge

into the new world of co-operative harmony. For such an association would be the pattern for national co-operation on a wider scale, and might form the nucleus of a real League of Nations of the world. . . .

“Into such a League might not America be willing to enter? By doing so America would be on the way to secure the world ideal of free, equal and friendly nations on which her aspirations are so firmly fixed. Ireland’s inclusion as a free member of this League would have a powerful influence in consolidating the whole body, for Ireland is herself a mother country with world-wide influences, and it is scarcely to be doubted that, were she a free partner in the League as sketched, the Irish in America would surely wish America to be associated in such a combination. In that League the Irish in Ireland would be joined with the Irish in America, and they would both share in a common internationality with the people of America, England, and the other free nations of the League. . . . If America were able to enter such a League, a further move would be made towards world peace, already begun by the agreement to be arrived at in the Washington Conference in regard to the scrapping of warships, and in addition, would lead through the improved relationship to a condition of financial accommodation and stability.

“Mr. Lloyd George’s invitation to the Irish representatives to consider how association with the nations of the British Commonwealth can best be reconciled with Irish national aspirations, makes it necessary to consider how far the members of the group have attained to independent nationality and what further steps should be taken to declare and secure such a standard of independence.”

On November 26 the Lord Chancellor spoke at Tunbridge Wells, vindicating the policy of Conference, commending Griffith and Collins as men who would stand by their word, and expressing the hope that Ulster would co-operate in an Irish Assembly. This speech, the first public indication of the progress of the Conference, did a great service to the cause of peace, and was instrumental in soothing the public mind inflamed by the uninformed attacks of the “die-hards”. He took an attentive audience over the main points of discussion and agreement.

(1) No coercion of Ulster, but a suggestion that she should co-operate in an all-Irish assembly while retaining all the privileges given her in 1920.

(2) An offer to Dail Eireann of not only the dignity but the substance of the position of the great self-governing Dominions.

(3) In no circumstances secession from the Commonwealth of the British Empire. Here it was easy to see that the Conference was endangered by disagreement over the oath of allegiance to the Crown.

Speaking of the two Irish leaders he said :

“ Of the two Irish politicians I have most come across, Mr. Griffith and Mr. Collins, I wish to make it absolutely plain that I have not the slightest doubt as to the sincerity of both these gentlemen, and the genuineness of their desire to reach a solution of our difficulties if such is attainable.”

On December 1 the British delegates handed a new draft scheme to the Sinn Feiners. They crossed to Dublin, and on December 3 the Cabinet of Dail Eireann met, and by a small majority rejected the British proposals. They crossed again that night and met the English delegates with the news of the rejection of the draft scheme.

After further conference commencing at five o'clock at Downing Street, Mr. Lloyd George reported that the amendments which the Irish delegates had brought back with them struck at the heart of all the tentative agreements and *rapprochements* of the last week ; here again was the old hopeless unacceptable claim for external association—that is, for an Ireland connected with the British Commonwealth only by an external link. Dissension had now broken out among the little group of Irish delegates, and Collins could not be persuaded to accompany the delegation. Griffith showed great courage and resource. Again and again he tried to force a break on Ulster, repeating that he accepted association with the Crown on conditions of Irish Unity, but he was driven from this position to the production of his amendments which were, in effect, a refusal to enter the Empire. It appeared to be blunt refusal of fundamentals, and the collapse of the negotiations seemed to be in sight ; the heroic attempt to force a break on the question of Ulster had failed.

The position was restored by the wizardry of the Prime Minister, who next morning (December 5), in conference with Collins, ranged over the question of Ulster, the Oath and defence. In the afternoon, when the Conference began again at three o'clock, the situation was retrieved, and the issue placed again on a negotiating basis. The Prime Minister demanded a clear answer from

the Irish on the question of Ulster; if their attitude were not clearly defined the break-up of the negotiations would be attributed by them to the unconciliatory attitude of the North. Did Griffith adhere to his promise to support the Ulster proposals? Griffith replied that everything depended on Craig's acceptance of the Treaty. The reply came back quickly that Craig must either accept or the British would proceed with the Boundary Commission. The question was temporarily shelved and the alteration of the oath was next debated. The Lord Chancellor produced a form of oath which Collins had handed in and which Lord Birkenhead himself had retouched. This delicately worded document which was incorporated into the Treaty reflects credit on the Lord Chancellor and Collins, although its very moderation provided fruitful soil for future dissensions. Mr. Lloyd George had wished to draft the oath as one of explicit loyalty to the King. The Lord Chancellor, with tact and understanding of the Irish, drafted an oath which was acceptable to both sides. Defence was next discussed, and after much argument Mr. Churchill abandoned the "exclusive" position and agreed to the construction by the Irish of such vessels as were necessary to protect the Revenue and Fisheries. Time was passing. The Ulster question was still in abeyance. The messenger to Sir James Craig missed his train, and a special train and destroyer were provided for him. Finally Griffith agreed personally to the Ulster provision, that in the event of Ulster refusing at once to enter an all-Ireland Parliament, such an all-Ireland Assembly should be created, but Ulster should be given the right to vote herself out of it. The necessary revision of the Boundary of Northern Ireland would be effected by a boundary Commission.

The hesitating members of the Irish delegation were further tempted by the final carrot which the Prime Minister dangled before them—"fiscal autonomy". This, with the revised oath and the fair prospect of unity, showed a substantial advance on the rejected draft of December 1. This was the limit of English concession, and the Irishmen were left to arrive at a decision on this momentous issue with war, the terrible alternative to a treaty, the responsibility for which, as was firmly rubbed in on them, would lie with any and every Irish delegate who refused to sign. Griffith had said that he personally was prepared to stand by the agreement as drawn.

“That is not enough”, said the Prime Minister quickly; “if we sign, we shall sign as a delegation and stake the life of the Government on our signature. Is the Irish delegation prepared to do the same? I have to communicate with Sir James Craig tonight: here are the alternative letters I have prepared—one enclosing the articles of agreement reached by His Majesty’s Government and yourselves, the other saying that the Sinn Fein representatives refuse the oath of allegiance and refuse to come within the Empire. If I send this letter it is war, and war in three days. Which letter am I to send?”

He followed this question by an eloquent appeal to them to accept such generous terms. They were given no time for a reference to Dublin on the grounds that it was imperative that Craig should hear the result of the Conference.

The exhausted Englishmen ate and drank and waited for the reply which was to be brought to them at ten o’clock. They waited in gloom and apprehension. No one expected a unanimous reply. The Lord Chancellor prepared his plan of campaign in the probable event of non-agreement. It was not until after eleven o’clock that the Irishmen returned, pale, but outwardly calm, with the expression on their faces of men who have arrived at a great decision, after hours of bitter arguments and reproach. So much the English delegates could read in their faces, but they could not know that for three hours the future of Ireland had lain in the hands of Barton and Gavan Duffy. Collins had announced his intention of supporting Griffith soon after the delegates left Downing Street. For two hours the two leaders exhausted every argument and entry on Barton. Finally, he agreed to sign. Duffy followed him.

Griffith announced that the Irish delegates were prepared to sign the treaty. A few matters of minor drafting were adjusted and the tension was broken. From one o’clock until nearly half-past two, while the typewriters rattled out the corrected draft Treaty, the English and Irish found relief from the strain in the natural reaction which followed the agreement. The iron shutters between them suddenly collapsed. They laughed and jested until the copies of the Treaty were brought in for signature. The Prime Minister has related how Griffith and Collins, acutely aware of their responsibility, both “saw the shadow of doom clouding that fateful paper—their own doom”. The Lord Chancellor, who had indeed jeopardised his future, if not his life,

at that moment, signed and said to Collins : " I may have signed my political death-warrant tonight." Collins replied sombrely : " I may have signed my actual death-warrant." A few months later he was ambushed and shot. The austerities of the first introduction of the Irish delegates were forgotten at this supreme moment of agreement ; the Englishmen walked over to the Irish and warmly shook hands with each.

It was left for the English signatories, particularly the Lord Chancellor, to face the furious attack of the Die-Hard Unionists. The historic day came when he had to defend his action and face his critics in the House of Lords on December 16. Lord Carson had made a bitter speech against the Treaty, and against him personally ; there were also lying in wait for him the Duke of Northumberland, Lord Londonderry, and Lord Salisbury. Lord Carson, in his speech, had also made a personal attack on Lord Curzon, who wrote to the Lord Chancellor on December 14 saying that Carson's maiden speech in the Lords was " an outrage on every convention of the House and on decency, the speech of a prosecuting counsel at the Old Bailey ".

On the last day of the debate Lord Birkenhead was the guest of the American Luncheon Club. With typical indifference to the ordeal ahead of him he addressed them on the Washington Conference in polished and eloquent periods in the midst of the Irish debate. At the end of his speeches he referred to the arena he was about to enter, and said :

" I go this afternoon to the last scene, so far as I am concerned, in this poignant drama. I go to the Philippi in which I am involved, greatly reassured and comforted by the kindness I have received today."

The Duke of Northumberland had moved an amendment to leave out of the motion the phrase approving the Treaty. The interest in the Lords debate centred entirely in the Lord Chancellor's reply to the whole debate and to his critics.

He had sat through the speeches attacking him and his action, flinging at him bitter taunts and reproaches, with eyes closed and hands clasped before him. He sat so still that he appeared to be asleep. He made no single note for reply.

Lord Sumner made a heavy indictment against the Government, warning the House that once Dominion status was granted there was no going back. Lord Sumner was aware that he



had no easy task in trying to persuade a majority to support the Duke of Northumberland's amendment, and he avoided a direct attack on the Treaty. He made a speech of explosive, if not very helpful, violence. He spoke of the absence of compensation for loyalists and went on to worry the House about the oath of allegiance. Lord Birkenhead sat as immobile as a Chinese idol. Towards the end of the speech he allowed himself slow, slight, but definite movements of impatience. When he rose, just before four, he applied himself at once to the attack of Lord Carson on Wednesday, and Lord Salisbury's speech of the day before. Hitherto he had woven few ironies into the austere pattern of his Irish speeches. Now he was to bandy gibe for gibe, sneer for sneer. Beneath a calm exterior his anger clamoured for release. He began in a quiet and unemotional voice which yet could not veil the tempests that were rioting within him. Lord Carson's speech had impressed the Peers and won over waverers to the "die-hards". It was the Lord Chancellor's task to retrieve the position and make the agreement safe. He was a little over-wrought, but had evidently steeled himself to a great effort. He spoke with intense energy and kept his hands clenched close to his body. At once he took Lord Carson's taunt that the Government were afraid to submit the settlement to the country.

"Lord Carson", he said, "told us that we dare not consult the country on these proposals. Is he quite sure we dare not? It is sometimes unwise to utter these taunts with so much assurance!" His voice was charged with emotion as he went on: "Lord Carson has publicly proscribed me from a friendship which had many memories for me and which I deeply valued. He can do that. No one can prevent him, but he cannot deprive me of the memories indissolubly bound up with the past, when we ran common risks in speech and act. I matched, and was glad to match, the risks he ran." Dealing with the suggestion of financial pressure and moral coercion of Ireland, he said: "Is it a form of moral coercion of Ulster if she elects to remain within the United Kingdom, that she will pay the same income-tax that you and I pay?"

LORD LONDONDERRY: "There is no grievance amongst Ulster citizens."

THE LORD CHANCELLOR: "I hear that with the greatest pleasure. It shows how unfortunate is the self-elected champion of the North and South, Lord Salisbury. (Laughter.) . . . In the jaundiced view



AT BUCKINGHAM PALACE AFTER THE IRISH TREATY WAS SIGNED  
*Front row, reading from left to right*  
LORD CURZON, D. LLOYD GEORGE, H.M. THE KING, LORD BIRKENHEAD, ALSTEN CHAMBERLAIN



of Lord Salisbury, we were weak puppets kicked about from one crisis to another in instability of purpose and insecurity of conscience. We are not supermen; we are not Napoleons; we do not belong to that class to which the noble marquis belongs. It is perfectly true that we have changed our minds more than once in the last three years, and we may change them again. (Laughter and cheers.) Our difficulties lie in our attempting to convince the mediaevalists amongst us (laughter) that the world has really undergone considerable modification during the last few years. (Cheers.) Neither Lord Salisbury nor Lord Carson has made any contribution to any alternative policy. Lord Salisbury says he is a Home Ruler, but he does not indicate the particular form of Home Rule he intends to honour with his support and what particular body of people he will succeed in persuading to believe in it. (Laughter.) As for the speech of Lord Carson, his constructive effort at statecraft would be immature on the lips of a hysterical schoolgirl." (Laughter.)

This taunt brought Carson to his feet in anger, but he could only interject: "I accepted last year the Bill of 1920."

THE LORD CHANCELLOR: "With the single exception of a Boundary Commission those for whom the noble Lord stands will retain everything the Bill gave."

Lord Carson denied that this was so. The Lord Chancellor insisted that it was. Lord Carson interrupted again. The Lord Chancellor raised his eyes to Carson and said coldly: "Perhaps the noble Lord wishes me to give way for him. It is the custom in this House to allow speakers to proceed." There were no further interruptions after that. The Lord Chancellor left Lord Carson for a moment to spray the Duke of Northumberland with ridicule: "In his mind every soldier is a superman, every politician is either a rogue or a fool, every working man a Bolshevik, actual or potential. The noble Duke has been stalking the country for the last six months, avoiding some processes of labour by always delivering the same speech (laughter); explaining now to a committee of the House of Commons, now to an extremely unconvinced meeting of his own neighbours (laughter), that the whole of England is about to take the earliest opportunity of turning Bolshevik and destroying our Government by violent revolution. If the noble Duke would turn his mind to constructive purposes in Ireland, he would add to his own reputation and make a more practical contribution to the national settlement."

He did not attempt to say that the Treaty was the best settlement he could have hoped for. "The Irish people are a very strange, wayward, and incalculable people. . . . But of this I am certain: that we have given a population which is overwhelmingly homogeneous

the opportunity of taking her place side by side with the other communities in the British Empire. That is an immense moment in history. We believe there is a chance that this settlement will satisfy that sentiment of nationhood, and if it does, year by year the animosities which have poisoned our public life will disappear" . . . Some time or other, he said, there must come a peace movement, and he asked those who criticised him most bitterly this plain question :

"Is it your alternative that we should resume the war, and take and break this people as we can with our military strength? When we have done that, shall we be any better off? Shall we be nearer a settlement when Lord Salisbury, if he becomes Prime Minister, has raised the army, carried fire and sword into every village in Ireland, and brought back a new laurel to add to the military standards of the great war? There is no one listening to me who does not know that on the conclusion of that war, with memories a thousand times more bitterly inflamed, Lord Salisbury would have to do what we have done now, enter into negotiations with these people and define the conditions under which they and we will live our lives."

The speech, one of the most brilliant heard in the House of Lords for years, came to its close like the final movement of a sonata—calm but irresistible in its dynamic force. For an hour he had spoken without a note, darted aside from his main theme to repel interruptions, easily reassembled his storm troops and driven forward his argument. He wound up :

"I would invite your Lordships to vote tonight with a deep sense of responsibility, not confident, but still hoping that we shall see in the future an Ireland which will at last, after centuries, be reconciled with this country; an Ireland to which both the contrasted systems will make each its own splendid and individual contribution, and an Ireland which, sitting when the Dominions meet at 10 Downing Street to decide, according to the evolutionary organisation of the British Empire, the supreme issues of policy which affect the fortunes of that Empire, the Prime Minister of Ireland, an equal by the side of equals, will lift up his voice to support and give expression to the historic destinies and rightful influence of that country." (Loud cheers.)

After a slight reply by the Duke of Northumberland and some questioning of the Lord Chancellor by Lord Midleton, the Peers divided. A mighty stream rolled slowly into the Government lobby. When the figures were announced it was found that 166 peers had voted for ratification and 47 against. The result

was received in complete silence. It must be noted that this sharp difference between the former protagonists of Ulster made no permanent breach. Happily at a later period the very old and friendly relations between Lord Carson and Lord Birkenhead were completely restored.

## XI

### *DECLINE AND FALL OF THE COALITION (1922)*

IN the last days of 1921 the existence of the Coalition was imperilled. The Government had made the Irish Treaty and could count on securing from Parliament the ratification of the bargain with Sinn Fein. But it knew that few of its Conservative supporters welcomed the treaty, while many of them detested it. The cleavage in the Conservative ranks which had long been apparent was daily widening, and those who distrusted the Prime Minister for what they regarded as his Labour and revolutionary sympathies were becoming daily more shrill in the expression of their opinions. It was natural then that Mr. Lloyd George, temperamentally inclined to an active policy, should conceive the idea of appealing to the country for a fresh vote of confidence, on the strength of his Irish success. Lord Birkenhead strongly supported the plan, in which it is understood that Mr. Churchill and Mr. (afterwards Sir) Austen Chamberlain concurred. The late Sir Archibald Salvidge, who was called into consultation, noted in his diary that Sir George Younger was not present at the meeting. Salvidge, writing to the Prime Minister a few days later (on December 29), gave a tentative approval to the scheme for an early election "if the idea is for the Government to appeal as a Coalition". But he observed with some reason that the Government was unlikely to win an election on the Irish issue, on which all parties except the "die-hards" were agreed, and that some definite benefit such as a reduction of burdensome taxes must be accorded as a counterblast to the persuasive offers of the Socialist Party. In spite of this chilling advice, the Prime Minister held to his project, and the Press began to discuss the matter as if a dissolution at the end of January was certain. But the whole scheme was rendered abortive when Sir George Younger, on January 11, bluntly told his constituents that it was ill advised and would gravely damage

the Conservative party. Lord Derby, who had hitherto been favourable, now began to feel doubts: he would not risk the chance of a Unionist split which might cause political chaos. Thus the opportunity passed, never to recur, and the Conservative critics of the Government were emboldened by what they regarded as a distinct check for the Prime Minister, the Lord Chancellor and Mr. Austen Chamberlain, who had been their official leader since Mr. Bonar Law's retirement from politics a year before.

We may turn aside from politics for a moment to note that in March 1922 Lord Curzon, as Chancellor of the University of Oxford, appointed Lord Birkenhead to be High Steward of the University. If there was any other office, outside politics, that he coveted but did not gain, it was the Chancellorship of his University. He took great pains in the performance of such duties as devolve upon the High Steward, and nothing pleased him more than to take part in University ceremonies or to entertain distinguished guests at his old college. Lord Curzon's letter of appointment, in his eighteenth-century manner, deserves quotation in full.

1 CARLTON HOUSE TERRACE.

January 27th, 1922.

MY DEAR F. E.,—

The second office in the Academic Hierarchy of Oxford University is that of High Steward, which until the other day was filled by Lord Halsbury, appointed to that post by Lord Salisbury in 1896. The functions of the High Steward—Seneschallus—are described in the University Statutes in terms of imposing amplitude—the principal of them being “*jura, consuetudines, libertates ac franchisesias Universitatis tuere ac defendere*”. The High Steward also has or may have to assist the Chancellor, Vice-Chancellor and Proctors in the discharge of their duties as well as to perform other functions of a quasi-legal or judicial character. For all these important even if rarely discharged services the highest legal attainments and authority seem to me to be required; and it is perhaps for this reason that the office has on several occasions been filled by a Lord Chancellor or ex-Lord Chancellor of England.

I confess that I regard it rather as an office which may properly



be filled by an Oxford man of exceptional distinction, marked out for even higher fame and advancement and celebrated from his earlier days as the best type of Oxford scholarship and erudition.

If the Chancellor, in whose gift this office lies, is fortunate enough to find an incumbent to whom, in addition to these qualifications, he is attached by ties of personal friendship and admiration, there cannot be a doubt that he would be criminally culpable if he were to contemplate any other choice.

Will you allow me therefore to make the offer to you, confident that, if accepted, it will receive the unanimous plaudits of the University, to whom (i.e. Convocation) the Chancellor's Letters Patent making the appointment have to be submitted for confirmation?

I may add, not as an inducement though perhaps in these times it is a slight consolation, that there is attached to the office the honourable stipend of £5 per annum!

I am, Yours very sincerely,

CURZON.

In the June following, the University conferred upon its new High Steward the honorary degree of Doctor of Civil Law.

When the Irish Free State (Agreement) Bill, ratifying the Treaty, reached its final stage in the House of Lords on March 27, 1922, the Lord Chancellor found himself compelled to administer a very severe rebuke to his former ally Lord Carson. The new Lord of Appeal had gone to Burton-on-Trent on the preceding Saturday and there made a most violent speech denouncing the Coalition and its "treachery" to the Irish loyalists. The Lord Chancellor declared that this was a breach of constitutional tradition. No judge had a right to go on a platform in the country and make political speeches. If a Law Lord could do so, how was a Lord Justice of Appeal or a Judge of the High Court to be prevented from making party orations? It was of vital importance to maintain the reputation of the Bench for absolute impartiality and freedom from political bias. Lord Carson was not in the House that afternoon but two days later he made a personal statement, insisting that, when he accepted the position of a Law Lord, he had clearly understood that he would be as free as before to do all he could for Ulster. He

took exception also to the Lord Chancellor's ruling, and the Lord Chancellor made a detailed and technical reply. As Lord Dunedin and Lord Finlay, speaking as Law Lords, expressed diametrically opposed opinions on the question, the one favouring and the other disagreeing with Lord Birkenhead, it may be taken that Lord Carson's conduct was novel and unprecedented, and unlikely to be repeated. It was admitted by all parties to the controversy that the Lord Chancellor must be both judge and politician; the dual character of his office may be logically anomalous but must be maintained.

Immediately after this debate, which was erroneously supposed to have affected the old friendship between the disputants, the Lord Chancellor obtained leave of absence on grounds of health and set out in his motor-yacht through the French canals for Genoa, where the Allies were holding an Economic Conference with representatives of Germany and Russia. He interrupted his holiday for a day or two to confer with the Prime Minister and to deliver a speech on the European situation to the English and American journalists attending the Conference.

"Most of the Americans", wrote a correspondent, "were doubtless awaiting the arrival of a petrified, ponderous and portly personage resplendent in scarlet and ermine, when a long, lean, sailor-capped, reefer-jacketed and white-trousered sailorman strolled in, stood nonchalantly at the head of the table and began to talk about British policy in Russia." It was known only to a few that the Lord Chancellor's sudden appearance at Genoa was no mere chance visit of a statesman on holiday. The truth was that the Prime Minister urgently needed his advice and his support in coming to a decision about British relations with the Bolshevik régime. Mr. Lloyd George had long been perturbed about our declining trade, with its consequent increase in unemployment. He thought that the only possible way of promoting trade recovery was to re-establish peace in Central and Eastern Europe, and he was prepared, if necessary, to recognise the Bolshevik Government which, he hoped, might become a purchaser of British goods. If the French Government continued to object to recognition of Moscow, Mr. Lloyd George was inclined to take an independent course at Genoa, regardless of the diplomatic consequences. Such views were widely advocated in the Liberal newspapers at the time, but they found

little support in the Conservative Press and were frustrated in the Cabinet—and not only by Conservative Ministers. Cabinet differences reached such a pitch over this question of Russia that it seemed as if the Ministry would break up. While most of his colleagues took sides, for or against recognition, the Lord Chancellor listened to their argument and read their pressing appeals without coming to a decision. He was told that if he agreed to recognise the Bolsheviks he would earn the lasting ill-will of the Conservative party, already enraged by his association with the Irish Treaty. He was warned that, if England ceased to move in step with France, the whole results of the Peace Conference might be jeopardised and Europe thrown again into chaos. He was urged not to be led away from the right path by the blandishments of the Prime Minister. It was to clear up his doubts that he went to Genoa. As it happened, the Bolsheviks, by what seemed to them a clever stroke in making a secret bargain with the German delegates at Rapallo on April 16, averted what might have been a British Cabinet crisis. The Russo-German agreement caused such violent indignation in England that the Prime Minister had to abandon for the time being the hope of entering into closer relations with Moscow.

The views of those of his colleagues who detested his Russian policy are clearly expressed in the following letter :—

*Strictly Private.*

COLONIAL OFFICE,  
DOWNING STREET, S.W.1.

1. 5. 22.

MY DEAR FRED,—

Many thanks for your two telegrams, which I appreciate. I shall not be right for some weeks, never having had a worse fall from a pony. I was dismounting on the offside, a slovenly trick which I have used thousands of times with impunity; and at the critical moment the pony gave a most violent bound and I fell plumb on my shoulders knocking all the wind and nearly knocking the life out of me.

Now about graver matters. The absence of Curzon from Genoa altered the balance, and doubled your responsibility. But from your telegram sent after you had been but a few days at Genoa and from your speech I feared that you had ceased to represent in any way the views which I thought we shared and



LORD BIRKENHEAD AND MR. WINSTON CHURCHILL



which you certainly undertook to safeguard. This caused me great distress—because all my thoughts in future politics turn on working with you, and all that future will be compromised by a fundamental disagreement. It seemed to me disastrous that you should weaken your influence with the Conservative party at this juncture by giving a new cause of reproach to your enemies. The burden which you patriotically assumed about Ireland was surely enough for you to bear at the present moment. Why should you go out of your way to add to it by taking up another policy most bitterly and in my judgment most rightly resented by the bulk of those on whom the strength of Britain depends, and with whom we had hoped to act? Moreover, if you were a full plenipotentiary attending continually and every day to the work of the Conference, I should at least feel that you had a real responsibility. But dropping in now and then you become an easy prey to appeals to your good nature, and thus run a grave risk of being made use of. However, I hoped that the harm, such as it was, was done, and that you would return at any rate not particularly compromised with this unhappy policy and episode.

There are three important safeguards against such a misfortune. First, no weakening of the Cannes conditions whether economic or political. This was the pledge given to the Cabinet.

Secondly, the British Empire surely has a higher claim on British credit than the Russian Soviets, and can offer a larger sphere, a better security and a more fruitful return.

Thirdly, no quarrel with France on account of Russia. Let us try to regain the confidence of France in order to modify her action against Germany.

By adhering to these three principles you may yet extricate yourself and what is more important this country from the entanglement into which she has been led by the personal views of one man, and may return home with the credit of having stood firm against temptation. In this way you will restore and regain your influence with your own party and greatly promote those future developments about which we have so often talked. Everyone would rejoice to see that you had played a manly part and had stood by those primary British national interests to which you have always been devoted. It is for these reasons as well as on account of our comradeship that I beg you to reflect on

the long consequences that may follow from the steps you take.

This letter is for your eye alone.

Yours always,

W.

There was no occasion for the Lord Chancellor to commit himself in either direction. But confidence was not restored. The Cabinet thenceforward was a less and less harmonious body, and the Conservative "die-hards" outside became more and more outspoken in their distrust of the Prime Minister. Lord Birkenhead's known loyalty to his chief exposed him to many reproaches which he bore as a rule with contemptuous indifference. When the Prime Minister, on his return from the Conference, was entertained at luncheon by his supporters on May 26, 1922, the Lord Chancellor took the opportunity of testifying to "the incomparable prestige and influence of this country and the incomparable prestige and influence of the Prime Minister" as the one circumstance most deeply impressed on his mind at Genoa. He declared that the Press campaign against Mr. Lloyd George—headed, we may note, by *The Times*—had been a complete failure, thus showing that there were definite limits to the admittedly great influence of the newspapers.

In the early summer the Lord Chancellor had the satisfaction of seeing his vast Law of Property Bill introduced in the House of Commons by the Solicitor-General, Sir Leslie Scott. The Bill must be described elsewhere. Here it may be noted that this great measure of land law reform had been so skilfully drafted that it passed through the House of Lords without a division and was afterwards taken as an agreed measure in the Lower House. Never has so complex and difficult a piece of legal reform been effected with so little controversy. The Lord Chancellor was understood at the time to be contemplating a substantial measure of judicial reform, involving the reorganisation of the circuit system, but he was unable to carry out his plans. His anxiety to maintain the high character of the Bench for impartiality, already shown in the case of Lord Carson, was again illustrated when he indicated that Sir Ernest Wild, the sitting member for the Upton Division of West Ham, must not retain his seat after the general election as he had been appointed Recorder of the City of London. Sir Ernest, in a personal ex-

planation in the House on May 29, fully admitted the justice of the Lord Chancellor's decision.

The Lord Chancellor had on June 29 to perform a very unpleasant and difficult duty when he replied to the criticisms passed upon the Government for recommending the grant of a peerage to Sir Joseph B. Robinson, the South African millionaire. Lord Harris had raised the question in a speech of singular bitterness, and Lords Lansdowne and Salisbury joined in the attack. The Lord Chancellor had been able, before making his speech, to obtain from Sir Joseph a letter in which he said that he had not sought the honour and begged leave to decline it. Thus the critics had gained their point. The Lord Chancellor then frankly admitted that there had been a failure to consult the Colonial Secretary in regard to the matter, and suggested that the whole question of the conferment of honours needed a full inquiry.

Throughout the summer there were further debates on the Irish situation. The Provisional Government in the Free State, headed by Mr. Michael Collins and Mr. Griffith, was now engaged in open conflict with the Republicans led by Mr. de Valera, who repudiated the Treaty. The Lord Chancellor steadily maintained the necessity of non-interference in the Irish quarrel. British intervention could only damage the Provisional Government and benefit the opponents of the Treaty. It was difficult to resist the claims of the loyalists in Southern Ireland to receive protection from outrage, but the Lord Chancellor steadily held to his course, despite the efforts of the Irish peers, like Lord Carson and Lord Midleton, and he was rewarded with the confidence of the moderate Irish leaders.

The Government had survived an uneasy session, and its star was waning. The parliamentary vacation had hardly begun when the defeat of the Greek army on the Sakharis River by Mustapha Kemal developed a new and most serious crisis. The victorious Turks advancing towards the Dardanelles seemed to threaten the small British army of occupation under General Harington. The French Government repaid the Prime Minister for his check to French policy at Genoa by a counter-check at Constantinople: France, it was made known, would not oppose the Turks or defend the neutrality of the Straits. The Prime Minister in desperation appealed to the Dominions for assistance



in the war which the Turks seemed about to renew. Through those anxious September days the Lord Chancellor was, as we know, the Prime Minister's most trusted adviser; Lord Curzon, the Foreign Secretary, was out of sympathy with the Prime Minister who had, it was thought, far too often disregarded his expert recommendations. Fortunately, through the firmness and moderation of General Harington at Chanak, a collision with the Turks was avoided and a convention was signed at Mudana on October 11 to regulate the evacuation of the Straits and of Constantinople by the small British force. But the *coup de Chanak* administered by the vengeful French Premier had its fatal consequences in British home politics. The Conservative opposition was now able to attack the Prime Minister as a war-monger who could not be trusted, and to clamour for a new Government. The clamour grew louder as the extent of the Greek collapse became apparent.

Lord Salisbury, for example, on October 16, said that there was too much autocracy in the Government; the repeated crises were discreditable. The standard of public life was being lowered. He was not afraid of Labour, and declined to regard the existence of a strong Labour Party as a reason for upholding the Coalition indefinitely. It was significant at this moment that in a by-election at Newport the local Conservative Association insisted on putting up and returning by a large majority a Conservative for a seat previously held by a Coalition Liberal.

Mr. Austen Chamberlain, as official leader of the Conservative Party in the House of Commons, saw that he must try to restore unity in the ranks. He summoned a party meeting at the Carlton Club for October 19. He hoped and apparently believed that, in deference to Lord Balfour, Lord Birkenhead and himself, the great majority of the Conservative Peers and Members would agree to continue their support of the Coalition. Sir Archibald Salvidge, who attended the National Unionist Executive on October 18, noted in his diary that the "die-hards" who were there evidently feared that the party meeting would go against them. But both sections, it would seem, had counted without Mr. Bonar Law. He had by now regained his health, but had so far refrained from resuming his part in politics—though in the spring he had openly objected to any recognition of Russia. It was assumed that he could, if he chose, resume his leadership

of the Conservative party, but no one knew whether he would appear at the Carlton Club. Sir Archibald Salvidge declared that he saw Mr. Bonar Law in private in the evening of October 18, learned from him that he would attend the party meeting and support the "die-hards" in their demand for the ending of the Coalition, and then went to report the decision to the chief members of the Cabinet. According to Sir Archibald, Lord Birkenhead, "who had been speaking at some function and was resplendent in full dress and orders" and who "looked youthful and handsome", accepted the news of Mr. Bonar Law's decision as the Cabinet's death-warrant, while admitting that Mr. Bonar Law's ambition to become Prime Minister was entirely laudable.

It must be said that Sir Archibald Salvidge's account of the crisis does not tally with the recollections of other and possibly more prominent persons who took part. The Lord Chancellor at any rate attended the party meeting on the following day and listened, while Mr. Chamberlain and Lord Balfour strove to keep the majority faithful to the Coalition. But Mr. Bonar Law, whether or not he had made up his mind the night before, had the decisive voice. He entered the room when the meeting was well under way, and he did not rise to speak until later, nor did he say very much when he had risen. But his belief that the Conservative Party, for its own good and the good of the nation, must leave the Coalition, was so evidently sincere that he carried two-thirds of the party with him. The adverse vote of the meeting, by 187 to 87, had an immediate result. That afternoon Mr. Lloyd George tendered his resignation to the King, and the Lord Chancellor's term of office was over.

Lord Birkenhead made no attempt to conceal his profound disgust at the Conservative Party decision. He condemned it in several vigorous speeches during the next few weeks. At a demonstration of Coalition supporters of Mr. Lloyd George on October 24 he said that he owed everything to the Unionist Party, and would continue to belong to it. "The idea of driving me out of it would be ludicrous if it were not impertinent." But he would not be "the catspaw and the jackal of any extreme section of the party", and he would speak his mind about "the mad counsels adopted at the Carlton Club". In that verdict he would not acquiesce, nor would he speak in favour of any

“die-hard” at the approaching election. On the other hand, the ex-Lord Chancellor, who had advised Sir Archibald Salvidge to maintain the unity of the Conservative ranks in Liverpool and to observe perfect loyalty to Mr. Bonar Law, felt that a definitely Unionist Ministry might be able to carry out the policy of the Irish Treaty with more success than any other Government. Speaking at the Colchester Oyster Feast on October 26, in the presence of his old chief, the ex-Lord Chancellor confessed his regret that he had not had another year in office, “which would have completed the various tasks which I had assigned to myself and after which I could have hoped that I had made as large an individual contribution as it was in my power to make”—to legal and judicial reforms. But he added that he could not desert his allies, at the demand of those who wished to expel Mr. Lloyd George “with ignominy” from the office which he had adorned. “I am”, he said, “a man who attempts to regulate my political life on a very simple basis, and it has been that of acting loyally with those with whom it has been my fortune to co-operate, and to carry out as I conceive them the whole ultimate obligations of that co-operation and that loyalty.”

Lord Birkenhead was thought by some of his friends to have been generous in the extreme when he spoke for several of Mr. Lloyd George’s Liberal followers in the brief election campaign of November 1922, and notably at Dundee on behalf of Mr. Churchill and at Bristol under the auspices of the Western Counties National Liberal Federation. But he was determined to keep alive the idea of a Coalition of moderate men, even if for the moment it was impossible to realise it. He did not spare some of his late colleagues. At West Birmingham on November 11, in a speech on behalf of Mr. Austen Chamberlain’s candidature, Lord Birkenhead commented bitterly on Sir George Younger’s disloyalty to the late Prime Minister. Sir George was reported to have said that he “would rather get rid of six leaders than see a split in the Conservative party”. On this Lord Birkenhead observed that, when Sir George “talked of getting rid of six leaders, his comment was that since the day when the proverbial frog swelled itself up in rivalry with the bull until it burst, no man had ever been in such grave physical danger as Sir George Younger was”. And he described the chief Conservative organiser as “the cabin-boy who had tried

to steer the political ship"—a phrase that stuck and rankled. The Conservative party, however, could afford to ignore such criticism for the time being, as the general election gave them 344 seats in a House of 615 members, and thus a majority of 73 over all the other parties. Lord Birkenhead was wrongly supposed to have doubted whether Mr. Bonar Law would secure a majority, however small. His plea for a Coalition was in fact based on a longer view and not on the immediate prospects of 1922, and it was to find confirmation a year later. As he pointed out in a speech on November 26, the Socialist Party had obtained 150 seats in the House of Commons and had polled four million votes as against the five million polled by the Conservatives. This steady growth of Socialism was, to Lord Birkenhead, an alarming fact ; in his eyes Socialism had become the real menace that must be met and fought.

In the list of honours granted by the King on the recommendation of the late Prime Minister, in November 1922, Lord Birkenhead was raised to an Earldom. He could look back on four years of strenuous political activities, among which the Irish Treaty must always stand pre-eminent. The legal and judicial work of his Chancellorship was no less important, and to that we must now turn.

## XII

### THE LORD CHANCELLOR AS JUDGE AND LAW REFORMER (1919-22)

THE appointment of Sir Frederick Smith to the Woolsack was announced on Friday, January 10, 1919. The news was ill received. *The Times* of Saturday disparaged the new Lord Chancellor by a compliment to his predecessor. On Monday, it was more openly offensive to the new Lord Chancellor and less gracious to the old. The hostility of the newspaper may be discounted on general political grounds. But the more staid and sober sections of the profession also viewed the appointment with some apprehension. F. E. Smith's rise had been too rapid and his progress too boisterous to please serious minds. His vehemence and eloquence had masked his more solid qualities of judgment and had obscured his learning. Even among the younger men there was a feeling that an injustice had been done to Lord Finlay, whose illustrious and venerable presence filled the public eye and whose gracious manners had endeared him both to Bench and Bar.

But if both public and professional opinion viewed the appointment with little approbation, probably no one was less pleased than the new Lord Chancellor himself. The ascent to the Woolsack meant to him the abandonment of his place in the assembly for which he felt himself to be, and for which he in fact was, most fitted, together with the final relinquishment, as it seemed then, of his most ambitious hopes. He was, both among politicians and among lawyers, a very young man, nine years younger than the Prime Minister under whom he was serving—years younger than Mr. Bonar Law, the leader of his own party. It was not unreasonable that he should have entertained visions of an eventual succession to the Premiership; and his sense of political realities was too strong for

him to fail to realise the obstacles which would forbid the holding of that office by a member of the House of Lords. Furthermore, to leave the Bar and to ascend the Bench entailed the loss of the large income which could be earned by the Attorney-General, with the prospect that at some time or other the salary of the Lord Chancellor would cease and his only resource would be the pension attached to that office. But, above all, the change involved a transition from the free, gay and adventurous life of the House of Commons and the Bar, whether in or out of office, for the ordered and laborious routine which necessarily attaches to his new position. He, therefore, hesitated. The Woolsack is in a sense the goal of the ambitions of every young barrister. Smith, a self-confessed seeker after glittering prizes, and one whose mind was fed with the great traditions of the office, did not despise so splendid a destiny. It had been a source of pride to him that he had taken Silk at as early an age and after as short a period at the Bar as any man in history. It gave him glowing satisfaction that he should become Lord Chancellor at an age younger than that of any of those who had preceded him—even nine years younger than his idol Erskine. He desired to be Lord Chancellor some day, but he would have been glad if the opportunity—and indeed the necessity—had been postponed.

Still, though he hesitated, he could not hesitate long, for the choice lay between the Lord Chancellorship, on the one hand, and the Attorney-Generalship without a seat in the Cabinet on the other. His sense of personal dignity would not allow him to remain in the Government in a position less influential than that which he had occupied ever since he became Attorney-General. But, and this weighed with him far more, his ambition, which was an ambition not only to snatch the prize but to play a worthy part in great events, would not allow him to withdraw himself from active participation in the work of government at this dangerous and critical moment. As he saw the position, he realised on analysis that he had no choice, and he accepted.

Characteristically enough, he then determined that, if he must be Lord Chancellor, his Lord Chancellorship should be splendid and memorable. He saw clearly, however, that neither splendour nor fame could be attained unless he sub-

mitted himself to the drudgery which is the daily life of the Lord Chancellor.

Lord Haldane frequently expressed the view that the Chancellorship was the most laborious of all offices under the Crown. This opinion of one who had a natural predilection for administration and who had held the office of Secretary of State for War during a period of reform is entitled to something more than respect. The office is laborious. Its holder has certain advantages over those of his colleagues who are members of the House of Commons. The House of Lords very rarely sits in the evening, so that the attendance of the Lord Chancellor is seldom required at Westminster after dinner. Furthermore, he is not troubled, like some of his ministerial colleagues, with the affairs of a constituency. But there are countervailing disadvantages. The duties begin earlier in the day and are more continuous and exacting. During the period of the year when the House meets both for legal and for legislative business, the Lord Chancellor must take his seat on the Woolsack or at the Judicial Committee of the Privy Council at 10.30, and must sit, with half an hour's interval for lunch, until 3.45 on the days when there is legislative business or 4 o'clock when there is none. There is seldom legislative business on Monday or Friday, and there is never judicial business on Wednesdays. But Wednesday morning was during Lord Birkenhead's Chancellorship usually occupied by the sitting of the Cabinet. Thus, on Tuesday and Thursday the Lord Chancellor is on the Woolsack with only two short intervals from half-past ten till dinner time, and the only time available for the other duties of the office is, besides Saturday, the afternoon of Wednesday and the late afternoon of Monday and Friday. These apparently free periods are left for additional meetings of the Cabinet and meetings of Cabinet Committees, for the writing of judgments, and for discussions with colleagues on points arising on the cases heard in the Lords or at the Judicial Committee, and for the discharge of the multifarious business which falls within the purview of the Lord Chancellor.

It will be observed that these duties involve a great deal of sitting still, and expose the Lord Chancellor to the necessity of listening to a great deal of other people's eloquence. Lord Birkenhead, though on occasion capable of exercising an

unexpected degree of self-restraint, was not by nature very patient. He was not sedentary by habit. And, though he did not undervalue pomp and circumstance, he soon tired of uncomfortable costume, and greatly disliked the discipline of the full-bottomed wig and the tight knee-breeches. He therefore found the position in many respects irksome. When he reached the time at which he was forced from office, he left with regret, and in after years he recognised that his true place was on the Woolsack and not elsewhere. While he had to discharge the duties, he did so with dignity and with respect to the forms of the House. But on occasion he sighed for greater freedom, both from the bodily restraints which the long hours and the uncomfortable costume placed upon his person, and from the even more galling restraints which the traditions of the House imposed on occasion upon his tongue.

Lord Birkenhead's political activities during his term of office have already been described and discussed. Here it is proposed to deal only with him as Lord Chancellor in the strictest sense of the word, that is to say, as the President of the two Tribunals which have been mentioned, as the Speaker of the House of Lords, and as the Minister upon whom rests the duty of discharging many of the functions which in a continental country would appertain to the Ministry of Justice. Thus, the Lord Chancellor is responsible for the conduct of the two subsidiary offices, those of the Land Registry and of the Public Trustee, for the appointment of the Judges of the High Court and of the County Court, and of numerous other legal officials, for the general supervision of the law relating to the administration of justice, and for the superintendence of the machinery both of the Supreme Court and of the County Court. The appointment of the Lord Chief Justice of England, of the Master of the Rolls, of the Lords of Appeal in Ordinary, and of the Lords Justices rests with the Prime Minister. But it may be surmised that, in the natural course of events, the opinion of the Lord Chancellor is sought, and is often decisive, upon the choice to be made when any of these vacancies has to be filled; and it may be assumed that Lord Birkenhead's respect for his own high office and his knowledge both of the Bench and of the Bar would have caused him to tender advice on such matters with confidence and decision. Beyond all this,



the Lord Chancellor has to appoint Magistrates and to make presentations to benefices, matters which claim a far greater amount both of time and attention, and on occasion anxiety than might popularly be supposed.

On Tuesday, January 14, Sir Frederick Smith received the Great Seal from the King and was sworn in as Lord Chancellor before His Majesty in Council. On the next day he took the oath of allegiance and the oath of office before the Master of the Rolls at the Law Courts. On February 3 he was created by Letters Patent Baron Birkenhead of Birkenhead in the County of Chester, and on the following day he took his seat as a Baron and as Lord Chancellor in the House of Lords. But some few days before, on January 31, he had sat and presided at the hearing of his first cause.

The House of Lords constituted as a Court of Appeal was exceptionally strong both in numbers and quality. The Lords of Appeal were Lords Atkinson, Dunedin, Moulton, Shaw, Sumner, and Cave. Of these, Lord Moulton was seldom available, and he died in 1921, his place being taken by Lord Carson. On the other hand, the Lord Chancellor could rely upon the regular help when needed of three ex-Lord Chancellors—Lords Haldane, Buckmaster and Finlay—and of Lord Wrenbury and Lord Parmoor, who for some years had given as assiduous service to the two Supreme Tribunals as if they were under a regular obligation to do so. Two other ex-Lord Chancellors—Lord Halsbury and Lord Loreburn—were still alive and could assist if necessary. Lord Mersey had but lately given up regular sitting. Lord Reading, though busily engaged, both by reason of his office as Lord Chief Justice of England and through the diplomatic work which had fallen on his shoulders during the war, was able to take part in an important criminal appeal. During Lord Finlay's tenure of office, the House had been strengthened by the elevation to the peerage of Lord Phillimore, who became a diligent and highly valued member of the Court; and of Lord Sterndale, who took part in the legal proceedings of the House of Lords on at least one occasion. So great an array of distinguished legal talent had never before, nor unhappily has ever since, been available; and though it would be indecorous to institute a comparison between the talents of the members of that

brilliant galaxy and those of the colleges of Lords of Appeal in Ordinary who preceded and succeeded them, the names set out above are an eloquent testimony. A man even with so firm a will and so cool a brain as that of the new Lord Chancellor might have felt a certain shrinking as he came to preside over a Tribunal selected from this great company of older men.

It was at once apparent that the Lord Chancellor possessed qualities that had not been suspected in the Attorney-General. He presided with dignity, showing great respect to his colleagues and firmness and decision in the management of his Court. The Lord Chancellor's colleagues were Lords Buckmaster, Finlay, Dunedin, Atkinson, and Shaw. The case (Fried. Krupp Aktiengesellschaft *v.* Orcanera Iron Ore Company),<sup>1</sup> whose name may be put on record as a curiosity, was concerned with the effect of war upon a contract made with a party who, on the outbreak of war, became an alien enemy, and it lies, therefore, in a byway of the law. Its course, however, exemplified the manner in which he hoped that business would be conducted under his Lord Chancellorship. It, and the case which followed it, were both heard in one day and judgment was delivered on the same day in both. Sentences taken from two opinions of the Lord Chancellor deserve citation as illustrating his methods of ironic courtesy as employed in *ex tempore* speech.

“Much of the argument with which the Court of Appeal was troubled has been abandoned before your Lordships, and I may be allowed to point out that, had the abandonment been somewhat earlier in date, some considerable economy might have been effected in the preparation of the record in this case”;

and

“The learned Counsel for the Appellants developed against the Court of Appeal only a complaint that they did not pay attention to that part of his submissions and complaints. With all respect to the learned Counsel, I cannot say that I hear with surprise that that part of his submissions was not a part that specially impressed the Court of Appeal.”

In 1923 Lord Birkenhead published a volume containing a collection of the more important judgments delivered by him

<sup>1</sup> (1919) 88 L.J. Ch. 304.

during his Lord Chancellorship. After his retirement from office, he took part on two occasions in the judicial work of the House of Lords. Upon the formation of Mr. Baldwin's second administration he became Secretary of State for India, and he resigned that office to undertake work in the City, so that after 1924 he was not available to sit as a Judge. During the three years and nine months of his Lord Chancellorship he took part in the hearing of some seventy cases in the House of Lords, and of some few cases in the Judicial Committee. He also presided over the sitting of the Committee of Privileges in the case of the Rhondda peerage, and in the Privy Council on the Wakeford appeal from the decision of the Consistory Court of the Diocese of Lincoln. In addition, when the work of the Probate, Divorce and Admiralty Division of the High Court had become congested and delayed by the rush of petitions for divorce which followed the conclusion of the war, he sat as a Judge of First Instance in that Division, hearing both defended and undefended cases. This constitutes an enormous amount of judicial work performed by a man who was simultaneously engaged, not only in the administrative work of his Department, but also as a prominent member of the Cabinet at a period of exceptional stress. It will not be possible to give full details of every case in which he sat, but both to illustrate the bent of his own mind and to mark the contribution which he made to the development of English jurisprudence, some few cases may be mentioned.

His first great case in the House of Lords was that of *Bourne v. Keane*.<sup>1</sup> The case concerned the validity of certain bequests made by the will of one Edward Egan who had bequeathed various sums of money for Masses for the repose of his soul to, amongst others, certain communities of Roman Catholic priests. The matter first came up on an originating summons in the Chancery Division before Eve J. who held, following the decision in *West v. Shuttleworth*<sup>2</sup> (a case decided by Sir Charles Pepys, afterwards Lord Cottenham and Lord Chancellor in 1835) that the gifts were void. His decision was upheld by the Court of Appeal consisting of the Master of the Rolls (Sir Charles Swinfen Eady) and Lords Justices Warrington and Duke. The appeal was argued for five days in the

<sup>1</sup> [1919] A.C. 815.

<sup>2</sup> (1835) 2 Mg. and K. 684.

House of Lords before the Lord Chancellor and Lords Buckmaster, Atkinson, Parmoor and Wrenbury; and, in the result, the House—Lord Wrenbury dissenting—reversed the decision of the Court below.

“Your Lordships”, said the Lord Chancellor when delivering his opinion, “cannot in my view escape the duty, anxious as it undoubtedly is, of overruling decisions which have been treated as binding for generations. The question is whether, by the law of England to-day, bequests of personalty to be applied to Masses for the dead can be supported. I have reached the conclusion, and I am bound to state it, that they can. Unwilling as I am to question old decisions, I shall be able, if my view prevails, to reflect that your Lordships will not within a short period of time have pronounced to be valid legacies given for the purpose of denying ‘some of the fundamental doctrines of the Christian religion’<sup>1</sup> and have held to be invalid a bequest made for the purpose of celebrating the central sacrament in a creed which commands the assent of many millions of our Christian fellow countrymen. In the second place, and in the event supposed, your Lordships will have the satisfaction of deciding that the law of England corresponds upon this important point with the law of Ireland, of our great Dominions, and of the United States of America. A decision based, as I believe this to be based, upon a sound view of the law, may reasonably appeal to these two powerful considerations of policy as against the admitted impolicy of disturbing old conclusions.”

The judgment is extremely elaborate, extending over some twenty-four pages of the volume of collected judgments, reviewing the effect of the Statutes and discussing the cases heard both before and after the Roman Catholic Charities Act, 1832. It is impossible to do justice to the argument by any summary. Yet, as a further instance of Lord Birkenhead’s style, it is difficult to resist the temptation to quote his comment on *West v. Shuttleworth*.

“The Master of the Rolls held that the bequests to the priests and ministers of chapels were void, but that the ultimate residuary gift was valid. The desire of the testatrix to benefit her soul was indeed defeated; but her desire to have others taught that such a desire was in accordance with true religion was, not without paradox, upheld.”

It must be noted that the decision of the House of Lords reversed the whole stream of cases from *West v. Shuttleworth*

<sup>1</sup> The quotation is from the Opinion of Lord Parker of Waddington in *Bowman v. Secular Society* [1917] A.C. 406.

onwards, and that Lord Wrenbury based his dissenting judgment on the ground that the decisions impugned had been in existence and acted upon for so long that it was too late to reverse them. No one who knew the temper of the mind of the Lord Chancellor would have expected him to be bound by such a doctrine.

“In my view it is undoubtedly true that ancient decisions are not to be lightly disturbed when men have accepted them and regulated their dispositions in reliance upon them . . . but this, my Lords, is not the present case. If my view is ill-founded, citizens of this country have for generations mistakenly held themselves precluded from making these dispositions. I cannot conceive that it is my function as a judge of the Supreme Appellate Court of this country to perpetuate error in a matter of this kind.”

*Sutters v. Briggs*<sup>1</sup> was a case arising under the Gaming Act, 1835. Briggs had put £50 on “Blue Dun” for the Cesarewitch with Sutters. “Blue Dun” lost. Briggs paid his gaming debt to Sutters by cheque. Subsequently he issued a writ against Sutters for the recovery of the £50, basing his claim on section 2 of the Gaming Act, which in effect makes money paid for such a transaction by any note, bill or mortgage recoverable from the payee. The question before the House turned upon the construction of the section and was wholly technical.

“The consequences of this view [that is, the view taken by the House] will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the Legislature. Where, as here, the legal issues are not open to serious doubt, our duty is to express a decision and leave the remedy (if one be resolved upon) to others.”

The grim irony of this observation is perhaps heightened by the fact that no remedy has as yet been found by the Legislature for such difficulties as the Lord Chancellor suggested.

The next case to be noted is that of the *Volute*.<sup>2</sup> It arose out of a collision between the *Radstock*, a torpedo-boat destroyer, and the *Volute*, an oil-tank ship proceeding in convoy. On this occasion the Lord Chancellor had the advantage of the special learning and experience of Lord Phillimore in Admiralty

<sup>1</sup> [1922] 1 A.C. 1.

<sup>2</sup> (1922) 1 A.C. 129.

matters, his other colleagues being Lords Cave, Finlay, and Shaw. Both the Courts below had held the *Radstock* alone to blame—the President in the Court of First Instance finding that the *Volute* had sounded the appropriate helm signal—the Court of Appeal finding that whether she did so or no, she was not to blame. The House of Lords differed from the President on the question of fact—whether the signal had been sounded or no. They, however, agreed with both Courts below in holding the *Radstock* at least partly to blame. In the result they found that “the *Volute*, in the ordinary plain common sense of this business . . . contributed to the accident”, and they held both to blame. But to arrive at this decision, it was necessary to analyse with considerable care and subtlety the doctrine of contributory negligence as applied to collisions at sea. This analysis must be followed in the report. The case is cited here for reasons which can be most appropriately reproduced in the language used by Lord Finlay when concurring in the opinion of the Lord Chancellor. “I have nothing to add but this one sentence, that I regard the judgment to which we have just listened as a great and permanent contribution to our law on contributory negligence and to the science of jurisprudence.”

Only one criminal case came on appeal in the House of Lords during the Lord Chancellorship of Lord Birkenhead, but that one raised questions of the greatest gravity on the subject of the relation between drunkenness and criminal responsibility. This was the case of the Director of Public Prosecutions *v.* Beard.<sup>1</sup>

The facts of the case were these. Beard, a night-watchman, was indicted at Chester Assizes before Mr. Justice Bailhache of the murder of a girl named Ivy Wood. It was alleged against him that, while committing the act of rape upon her, he suffocated her. These facts were proved, or, so far as admissions can be made in a criminal case, admitted at the trial. The defence was that Beard was drunk, and that his mind was so affected by drink as to reduce the crime from murder to manslaughter, in accordance with the rule laid down in a case in the Court of Criminal Appeal of the King *v.* Meade.

Mr. Justice Bailhache, in charging the jury, directed them

<sup>1</sup> [1920] A.C. 479.

that the prisoner was entitled to a verdict of manslaughter only if by reason of his drunkenness he did not know what he was doing, or did not know that he was doing wrong, giving as an instance the case of a man who cut the throat of a woman supposing that he was cutting the throat of a pig. The jury found Beard guilty of murder and he was sentenced to death.

On appeal, the Court of Criminal Appeal quashed the conviction on the ground that the Judge had misdirected the jury, in that he should have stated the law to the jury as laid down in the *King v. Meade*,<sup>1</sup> that is, the presumption of law that a man intends the natural consequences of his acts may be rebutted by showing that his mind was so affected by drink that he was incapable of knowing that what he was doing was dangerous. They accordingly reduced the verdict to manslaughter and imposed a sentence of 20 years penal servitude.

The Director of Public Prosecutions, having obtained the certificate of the Attorney-General under section 1(6) of the Criminal Appeal Act, 1907, that this decision of the Court of Criminal Appeal involved a point of exceptional public importance and that it was desirable in the public interest that a further appeal should be brought, appealed to the House of Lords against it.

The Court constituted to hear the case was of unusual strength, comprising, in addition to the Lord Chancellor, two ex-Lord Chancellors (Lords Haldane and Buckmaster), the Lord Chief Justice of England (Lord Reading), and Lords Dunedin, Atkinson, Sumner, and Phillimore.

It was argued with great elaboration and care by a distinguished Bar; for the Crown, the Attorney-General (Sir Gordon Hewart, now Lord Chief Justice of England) led the Solicitor-General (now Lord Hanworth, Master of the Rolls), Sir Ellis Griffith, K.C., Sir Richard Muir, Mr. G. A. H. Branson (now Mr. Justice Branson), and Mr. Ralph Sutton. Mr. Artemus Jones, K.C. (now His Honour Judge Sir Artemus Jones), Mr. Austin Jones (now also a County Court Judge), and Colonel Dallas Waters appeared for the prisoner. The hearing occupied the 16th, 18th and 19th December, 1919, and it was not until March 5, 1920, that the Lord Chancellor was in a position to deliver the judgment of the Court. This delay did not

<sup>1</sup> [1909] 1 K.13, 895.

affect the prisoner, for the Secretary of State had already intimated that, if the appeal by the Crown were successful, the death sentence would not be carried out. In point of fact, the prisoner, who was undergoing his term of imprisonment, listened to the proceedings at the Bar of the House with the air of a more or less interested spectator.

The judgment of the Court was delivered by the Lord Chancellor—all the other learned Lords concurring. It was indeed of great importance that the law should be stated with authority and that no possibility of confusion should arise by the delivery of separate opinions. Every care was taken, therefore, to sift not only the evidence but the doctrines applicable to the case. The opinion once drafted was examined by each of the Lords who took part in the hearing, and the final result incorporates the views, and to some extent embodies the language, of each separate member of the united Court. It is thus a treatise upon the view taken by the law of criminal acts committed in a state of drunkenness. While this general description is true, regard must be had, in this as in other cases, to the dictum contained in the opinion itself—

“It is extremely necessary to bear in mind that a judge when directing the jury with reference to the facts and circumstances of a particular case is not writing in abstracto a treatise upon the criminal law, and that his words must always be considered with regard to the special facts then before the jury.”

The facts, which when first stated seemed reasonably simple, were in truth not very clear, and the conclusion, stated in language which is highly characteristic of Lord Birkenhead's method of thought, was as follows :

“I doubt, without reaching a conclusion, whether there was any sufficient evidence to go to the jury that the prisoner was, in the only relevant sense, drunk at all. There was certainly no evidence that he was too drunk to form the intent of committing rape. Under these circumstances, it was proved that death was caused by an act of violence done in furtherance of the felony of rape. Such a killing is by the law of England murder.”

The next case to notice is one which arose not in the ordinary jurisdiction of the House of Lords as a final Court of Appeal under the Appellate Jurisdiction Act, 1876, but in the



Committee for Privileges, that is, the Rhondda Peerage Claim.<sup>1</sup>

The Sex Disqualification (Removal) Act, 1919, provides that "a person shall not be disqualified by sex or marriage from the exercise of any public function".

When the Bill for this Act, which originated in the House of Lords, was passing through Parliament, the Commons inserted after the word "function" the words "including that of sitting and voting in the House of Lords". The House of Lords disagreed with this amendment, and the Commons did not insist. The debate in the Lords on the motion to disagree with this amendment, which was moved by the Lord Chancellor, was both amusing and instructive. The Lord Chancellor thought that it was probably certain that it would not seat peeresses in their own right because they are

"unable to sit, primarily, not by reason of disqualification which is due either to sex or marriage, but because they do not receive a writ, and because the Patents which created them do not direct the issue of a writ in their case".

He concluded his speech as follows :

"We approach those who are good enough to make those proposals to us rather with the melancholy words on our lips, *Morituri te salutamus*. If we are to be abolished, I think that I would rather perish in the exclusive company of members of my own sex. This question was left by the Government as a free question, open to the decision of private Members of the other House, without the intrusion of the Party Whips. It is naturally and consequentially the intention of the Government to adopt a similar course before your Lordships. I therefore enjoy the privilege which any private member of your Lordships' House possesses, and in order that I may exercise that privilege, I beg, for reasons that I have briefly indicated, to move that your Lordships disagree with the Commons' Amendment."

Lord Haldane replied in favour of accepting the Commons' amendment. He argued the question on its merits. But in the course of his argument he said :

"If this amendment is accepted it does not enable women who are Peeresses in their own right to take their seat in this House ; they can only do that if the terms of the Letters Patent or of the other document creating the Peerage prescribe it, and also if a Writ of Summons is

<sup>1</sup> [1922] 2 A.C. 339.

issued. It may or may not be necessary, if we admit the principle, that some Amendment may be required for the issue of the Writ of Summons."

It was, therefore, assumed on all hands that the Commons' amendment, having been rejected, *a fortiori*, no successful claim could be advanced by a peeress in her own right to receive a writ summoning her to sit in the House of Lords. It was a matter of some surprise when such a claim was put forward by Lady Rhondda. Her claim was based upon a Patent conferring upon her father, formerly Mr. D. A. Thomas, well known for his services during the war as Food Controller, the dignity of Viscount Rhondda with the usual remainders and with a special remainder, in default of heirs male of the grantee, to his daughter, Lady Mackworth, afterwards Viscountess Rhondda and the heirs male of her body. The Patent was drawn in the common form used on such occasions, that is, it expressly conferred upon the original grantee and his heirs male, and in default of such issue upon the heirs male of Lady Mackworth, a seat, place and voice in Parliament. But, while conferring upon Lady Mackworth the rights of a Viscountess in the event of the failure of male issue of the grantee, the Patent did not grant expressly to her a seat, place or voice. Lord Rhondda died on July 3, 1918, leaving Lady Mackworth as his sole issue.

The petition was referred to the Committee for Privileges. It was constituted for the purpose of hearing the petition of Lords Haldane, Wrenbury and Phillimore with four lay peers. Mr. Talbot, K.C. (now Mr. Justice Talbot) led for the Petitioner, and the Attorney-General (Sir Gordon Hewart, K.C., now Lord Chief Justice) appeared in person. After a very short hearing, the Attorney-General offering no opposition, the Committee found in favour of the Petitioner.

The position was humorous. The Commons, as already stated, had desired to open the House of Lords to women and for that purpose had proposed to amend the Bill. The Lords had rejected the proposal. Both Houses, as it now turned out, had acted in ignorance of the fact that women were admissible under the words of the Bill as they stood. And they had formed this opinion upon the best legal advice open to them, including that of Lord Haldane. If the Report

of the Committee for Privileges were now accepted by the House, both Houses, including the noble Lord who presided over the Committee, would have been shown to have been mistaken. And by the canons applicable to the construction of Statutes, it was at least questionable whether, when the effect of the law was under discussion, it was permissible to refer to the opinions expressed by the legislators at the time of its passing or by the House of Lords itself in the reasons which it gave for disagreeing with the Commons' amendment. When the petition was heard a second time (as will shortly appear), Sir Ernest Pollock (now Lord Hanworth, Master of the Rolls), who by then had become Attorney-General, tendered in evidence the entry in the Lords Journals giving their reasons for disagreeing with the Commons' amendment. Objection was taken to the admission of this evidence. On a suggestion from the Committee, the Attorney-General thought it wise not to press the point.

“On many grounds,” said the Lord Chancellor, “I regret this circumstance, for that (that is the Parliamentary) history would upon its personal side have been worthy of the massive irony of Gibbon. I am, however, debarred from the entertainment of speculating upon the grounds which have disabled a noble and learned friend of mine from discovering in his legislative capacity that which he so plainly discerns when he applies his judicial self to the same subject matter.”

This, however, is to anticipate. When the Report of the Committee, presided over by Lord Haldane, came before the whole House, the Lord Chancellor moved that the matter should be referred back, and the House accepted the motion. Twenty-six Lords attended the re-hearing and took part in the division on the petition. Lord Donoughmore (Lord Chairman) presided. The Committee included the Lord Chancellor and five Lords of Appeal in Ordinary (Lords Cave, Dunedin, Atkinson, Sumner and Carson), three ex-Lord Chancellors (Lords Haldane, Buckmaster and Finlay) and three other Lords who usually sat in the House on judicial business (Lords Parmoor, Wrenbury and Phillimore). Among the other peers voting were men of all political parties, and most of them were of long parliamentary experience. By a majority of twenty-two to four the Committee rejected the claim. It

appears from Lord Birkenhead's speech that ten Law Lords (including Lord Phillimore, who had been a consenting party to the Report of the first Committee) voted in the majority with twelve lay peers (of whom Lord Muir Mackenzie and Lord Riddell delivered opinions) against two Law Lords (Lords Haldane and Wrenbury) and two lay peers. Naturally the leading judgment for the majority was delivered by the Lord Chancellor.

The common sense of the matter might have been expressed in words used by Lord Riddell in his speech.

"The Sex Disqualification (Removal) Act deals with juries, solicitors, students and teachers with meticulous care. Had the intention been to confer the important right now claimed surely Parliament would have inserted an express provision to that effect."

But in respect for the previous decision of the Committee it had been necessary to argue the question at the Bar with great elaboration, and the Lord Chancellor's speech was, of necessity, equally elaborate. It covers nearly thirty-two pages in the Law Reports. Obviously it is impossible to summarise it here so as to do justice even to its main contentions. Its general plan was to examine the meaning to be placed upon the words of the Patent, illustrating that meaning by the ordinary rules of construction and by the history as it appears from previous patents, from decisions and from statute law. The conclusion reached is that

"a peerage held by a peeress in her own right is one to which in law the incident of exercising the right to receive a writ is not and never was attached. . . . The right really consists in the exercise, and a common law right to do something, which the common law forbids to be done is, when so defined, a contradiction in terms. . . . A person who is a female must remain a female till she dies. Apart from a change in the law, she could not before 1919 both be a woman and participate in the legislative proceedings of the House of Lords. By her sex she is not . . . disqualified from the exercise of this right. In respect of her dignity she is a subject of rights which *ex vi termini* cannot include this right."

He then passed to examine the practice of Parliament in the choice of words, when dealing with the right or duty of attend-

ing in the one House or voting for election in the other, and found it

“impossible . . . to suppose that the Legislature, when endeavouring to confer upon women a privilege which was coupled with a dignity, could have used words which were so loose as respects the privilege and so inapt as respects the duty”.

He closed with a vigorous repudiation of the inference which Lord Haldane sought to draw from the *Wiltes Peerage* case<sup>1</sup> that it would be open to a future Committee to reverse the decision.

The case next to be noticed did not involve any constitutional principle nor any question of law. But both during its progress and after its conclusion it aroused great popular interest, and it caused Lord Birkenhead great searchings of heart. F. E. Smith stood in the following of the lawyers of the eighteenth and early nineteenth centuries when the maxim that every man is presumed to be innocent until he is proved to be guilty was adopted wholeheartedly by the legal mind. When Attorney-General he could fight for a conviction in a proper case, using all the legitimate weapons of an advocate. But, when he was not fettered by duty, he found it most difficult to believe a man to be guilty, and we find him as a judge striving almost to excess to find some explanation consistent with innocence. The case of *Wakeford v. The Bishop of Lincoln*<sup>2</sup> is an example of this attitude of mind; and in it his natural predisposition in favour of the accused (the appellant in the proceedings before him) was heightened by his regard for the high office which that unfortunate man held in the Church, and by the utter ruin which must necessarily follow a sentence of guilty. It shows also with what unswerving logic, when once he was convinced, he could proceed to judgment.

The Rev. John Wakeford was Precentor and Canon of Lincoln, Archdeacon of Stow and Vicar of Kirkstead in that Diocese. He, to quote the judgment,

“enjoyed a considerable reputation for spiritual gifts and a high character. He is a man of power and eloquence. He has been widely sought throughout the country as a preacher and has received the confidence of those with whom he has been associated in the work of the Church”.

<sup>1</sup> (1869) L.R. 4, H.L. 126.

<sup>2</sup> [1921] 1 A.C. 813.

This man was charged before the Consistory Court of the Diocese under the Clergy Discipline Act, 1892, with certain offences against the ecclesiastical law. He was found guilty and applied for leave to appeal to the Privy Council. Leave was granted on grounds fully set out in the final judgment of the Tribunal, and the case came on for hearing before a Board consisting of the Lord Chancellor with Lords Buckmaster, Dunedin, Shaw, and with four assessors (the Bishops of London, Gloucester, Rochester and Ely). Counsel for the Appellant were Sir Edward Carson, K.C. (appearing in what must have been among his last great cases at the Bar), Sir E. Marley Sampson, K.C. (now Stipendiary Magistrate of Swansea) and Mr. Wilfrid Lewis (now Junior Counsel to the Treasury on the Common Law side). Mr. Douglas Hogg (afterwards in succession Attorney-General and Lord Chancellor, and now Viscount Hailsham, Secretary of State for War and leader of the House of Lords), Mr. E. W. Hansell (afterwards an Official Referee and now Sir William Hansell, K.C.) and Mr. W. N. Stable appeared for the Bishop of Lincoln to support the decision of the Court below. The hearing, which occupied many days, took the form of a re-trial. The witnesses who had given evidence below were recalled and re-examined, and much additional testimony, both oral and written, which had been unavailable at the previous hearing, was laid before the Board. The case was fought with great determination on both sides. The court room was crowded throughout; and there were many dramatic moments.

The admitted facts were as follows: During the afternoon of March 14, 1920, the Archdeacon went by train from Lincoln to Peterborough. He stayed at the Bull Inn in that town on the nights of the 14th and 15th. On the 16th he returned to Lincoln. Again, on Friday, April 2, having paid a visit to London to preach, he travelled to Peterborough and stayed at the same Inn, returning to Lincoln on Saturday. He was a married man. It was alleged against him that on each of these occasions he was accompanied by a woman who was not his wife and who slept in his bedroom.

As to the first visit, apart from the admitted facts set out above, almost all his movements were in dispute. "The time at which he reached Peterborough and the time at which he

left Peterborough to return to Lincoln, the rooms in which he took his meals, the times at which he went out and in, even the clothes in which he slept and the state of the weather . . . formed the subject of acute controversy." The accounts of the second visit, as told by him and as told by the witnesses against him, were equally in complete contradiction. According to the Appellant's case, "The whole story upon which the charge is founded, that he was accompanied by a woman on both occasions, or on either, is completely untrue. Those witnesses who support the story are either victims of mistake or have invented it in pursuance of a conspiracy." Furthermore, the Appellant's own story, "being essentially the product of one mind and that the mind of a man of observation and intelligence on matters within his own knowledge, is complete and consistent in itself". On the other hand, the story told against him "is a mosaic of statements made by a great number of persons, each of whom can only speak to particular moments of time or particular instances. It does not fit together so as in all respects to form a complete picture, nor is it always consistent with itself".

As the case progressed, it became obvious that if the Archdeacon's story was true, the evidence against him could not be based on mistake alone. It must be a deliberate fabrication supported by wilful perjury. The defence was conducted on this hypothesis. Wakeford was on bad terms with his brother-in-law, Mr. Worthington, and with a Mr. Moore, both clergymen holding benefices in the locality. "Upon this ill-feeling (on the part of Moore) and animus (on the part of Worthington) the Appellant's Counsel has sought to build the theory of a gigantic conspiracy, swiftly designed and skilfully organised, directed to the ruin of the Appellant, conceived by Moore and Worthington and put into execution by King (a sergeant in the Peterborough Police) and the Pughs (who kept the Bull Inn), with the assistance, more or less well informed, of the servants at the hotel, Tuplin, and King's colleagues in the Peterborough police force."

The cumulative force of the evidence against the Appellant was such as to force the defence to some such counter-attack. But every advocate knows the dangers of such a course. It puts in issue the character of every alleged confederate. In particular, in this case, it involved a most serious allegation

against Moore. "If there was material capable of supporting a suggestion so astonishing, opportunity for putting that material to Moore in cross-examination was not withheld. . . . Mr. Hogg offered to put both Moore and Agar (an ex-policeman employed as a private inquiry agent) into the box so that they might be cross-examined . . . and the offer was declined. We are without any single scrap of positive evidence to support the theory. No motive is suggested for the participation in the plot of King" and the other suggested conspirators. "No question was put to any of these witnesses in cross-examination suggesting such a motive. No suggestion was made that . . . any of them had any personal feeling against the Appellant, or indeed had ever seen or heard of him before. And the only possible motive remaining—that they were bribed by Moore or by someone unknown—is left in the air unsupported by any evidence".

So much for the probability of such a theory. "It remains to be considered whether such a theory is even possible." The Lord Chancellor proceeded to a searching analysis of the evidence. That showed that, if there was a conspiracy, it had been framed at a date before the first visit to Peterborough, at a time when no one could have anticipated that the Archdeacon was going there or that he would stay at the Bull. "By what amazing coincidence had it come about that the Appellant should have selected on this occasion the one hotel in Peterborough whose landlord was ready to be corrupted, able to carry with him into this maze of slander and perjury his wife and servants, and zealous to commence a systematic course of forgery in support of the plan?"

As against this, stood the high character of the Appellant and the audacity of the alleged misdeed. "The delinquency is lacking alike in cunning and in contrivance. It is difficult indeed to associate simplicity so absolute with a course so perilous."

Each side was in a somewhat similar difficulty. On the one hand, the Archdeacon was identified as having visited Peterborough Cathedral on March 15 in company with a woman. He admitted the visit and that he was with a woman, but he alleged that she was, like himself, a casual visitor whom he then met for the first time and whom he never saw again.



The defence were unable to produce this woman. It seemed to the Board "inconceivable that any woman or girl, who had been with the Archdeacon in the Cathedral in the circumstances described by him, should be so callous that when a word from her would clear an innocent man she should obstinately hold her peace". It was, on the other hand, less surprising that the Prosecution could not lay hands on the partner in the Archdeacon's adventure. She could not be expected to come forward willingly. An attempt was made to search for her. And unfortunately the Pughs identified a particular lady, but the identification broke down and was not adopted by the Prosecution, and she was exonerated by the Court.

The final piece of evidence consisted of the entries in the Visitors' Book at the Bull. The Lord Chancellor discussed the matter with great care, regarding it as "perhaps the crucial point in the case". He concluded:

"their Lordships, upon the evidence of their own eyes, have reached the conclusion that there is no doubt upon the matter . . . the only alternative to the authenticity of the writing is the supposition that it was a carefully planned forgery of the Appellant's name as an integral part of the alleged conspiracy. For the reasons already given, their Lordships feel that the hypothesis of such a conspiracy is utterly untenable. It follows that the writing in such circumstances furnishes an almost overwhelming corroboration of the other evidence."

The appeal, therefore, failed.

"Reluctant as their Lordships were to believe such a charge against a man in the position and with the history of the Appellant, they scanned vigilantly every circumstance and every argument which could possibly be reached in his favour. They have reached the conclusion that the judgment of the Consistory Court must be upheld."

It is tempting to analyse other cases which illustrate Lord Birkenhead's methods as a judge of fact, particularly those of *Gaskill v. Gaskill*<sup>1</sup> (which he heard when sitting as a Judge of First Instance in the Probate, Divorce and Admiralty Division) and of *G. v. G.*, and *Rutherford v. Richardson*,<sup>2</sup> which came before him on appeal to the House of Lords. But it is perhaps enough to say that they illustrate the characteristics both of his literary style and of his tireless endeavours to arrive at

<sup>1</sup> [1921] P. 425.

<sup>2</sup> (1922) T.L.R. 42.

the truth. It is, however, impossible to leave unnoticed one case heard before him after he had ceased to be Lord Chancellor, on account both of the intrinsic importance of the point of law involved, and of the sharp division of judicial and professional opinion upon the decision.<sup>1</sup>

The Hon. John Russell presented a petition for divorce from his wife, alleging her adultery with two named co-respondents and with a man unknown. The case was heard before the President of the Probate, Divorce and Admiralty Division (Sir Henry Duke, now Lord Merrivale) and a special jury. The jury found Mrs. Russell not guilty of adultery with the two named co-respondents, and disagreed as to the man unknown. The case was then reheard before Mr. Justice Hill with a special jury on the charge of adultery with the man unknown and on a further charge of adultery with a named co-respondent who had been added to the suit after the first hearing. The jury again acquitted the respondent and the named co-respondent on the latter charge. But they found the respondent guilty of adultery with the unknown man.

The only evidence of adultery with the man unknown was the birth of a child to the respondent, coupled with the testimony of the petitioner that there had been no such intercourse between himself and his wife as could have resulted in conception. The respondent appealed to the Court of Appeal (Lord Sterndale, M.R., and Lords Justices Warrington and Scrutton). They dismissed the appeal. She then appealed to the House of Lords, alleging that the verdict was against the weight of evidence, that the Judge had misdirected the jury, and that the husband's evidence of non-access was inadmissible in law. The House reached the conclusion that the first point had been abandoned in the Court of Appeal and was not open to the Appellant before them, and that there had been no misdirection. "Unless the evidence given by the husband . . . was in law receivable there was no evidence of adultery proper to come to the jury at all." The question before the House was therefore "whether or not by the law of England evidence of non-access may in proceedings for divorce be tendered by a spouse and received by the Court with the object or possible result of bastardizing a child of the marriage". The

<sup>1</sup> Russell v. Russell [1924] A.C. 687.

House was composed of Lord (then Earl of) Birkenhead and Lords Finlay, Dunedin, Sumner and Carson. In the upshot they were divided three to two—Lords Sumner and Carson forming the minority. The majority allowed the appeal and set aside the verdict and judgment.

It cannot be pretended that this result was either expected by, or agreeable to, those most conversant with the subject matter. It was said to “revolutionise the practice of the Divorce Court” where such evidence had been receivable, at least ever since the passing of the Act of 1869, which made “parties to any proceeding instituted in consequence of adultery and the husbands and wives of such parties” competent witnesses in any such proceeding. It was obviously highly inconvenient. Lord Birkenhead comments :

“The practice of the Divorce Court must accommodate itself to the authority of the rule. If the inconvenience (contrary to my expectation) proves intolerable, the Legislature, if it thinks proper, may provide a remedy.”

The rule is founded on a decision by Lord Mansfield in the year 1777. He laid down that “It is a rule founded on decency, morality and policy that they (that is, the spouses) shall not be permitted to say after marriage that they had had no connection and therefore the offspring is spurious.”

“We approach the matter”, says Lord Birkenhead, “without responsibility for the genesis of the rule. We have not to ask whether we should ourselves have laid it down. . . . We find the rule living and authoritative. We find its application to legitimacy proceedings everywhere conceded. Our task, therefore, is to determine whether evidence inadmissible in such proceedings is admissible in divorce.”

He reviewed the authorities and concluded that it was not.

A Lord Chancellor is usually known to his contemporaries and remembered by posterity more by his judgments, and by the influence which they exercise upon the development of the law, than by his other activities. But as statute law and administration assume an ever-increasing importance, a modern Lord Chancellor cannot hope to rival Hardwicke or Eldon as Lord Chancellors or Mansfield as Chief Justice, in moulding by his decisions equity or law to the needs of modern life.

His chief part must be played in the fields of legislation and administration.

Lord Birkenhead was well fitted to play such a part, and the circumstances of the time called for a law reformer. Lord Halsbury's long periods of office, though by no means barren of legislative achievement, corresponded with an era when public opinion, deeply stirred on political questions, was content on purely legal matters to watch the development of the system inaugurated by the Judicature Acts and the Appellate Jurisdiction Act in the middle seventies. Lord Loreburn's Chancellorship had produced the Public Trustee Act and the Report of the Royal Commission, presided over by Lord James of Hereford, on the Selection of Justices of the Peace—a document of great importance to the Lord Chancellor's administration—but little else. Lord Haldane had far-reaching plans for the reform of the law relating to the transfer of land, for the collection in one office and under one head, as a Minister of Justice, of many of the functions of the Lord Chancellor and of the Home Secretary, for the creation of an Imperial Court of Appeal, and, as an interim step before that could be accomplished, for the immediate strengthening of the Supreme Appellate Tribunal. He effected this last object, introducing and passing the Appellate Jurisdiction Act, 1913, under which Lord Dunedin and Lord Sumner were appointed Lords of Appeal in Ordinary, while further voluntary help was obtained through the conferment of peerages upon Sir C. A. Cripps (as Lord Parmoor) and on Lord Justice Buckley (as Lord Wrenbury). The House of Lords and the Judicial Committee were thus sufficiently reinforced to meet the immediate needs. But the fruition of Lord Haldane's further schemes was cut short by war and by the termination of his own tenure of office.

In the general turmoil of the next four years, Lord Buckmaster and Lord Finlay could do little but make provision for the emergencies of the moment. War brought its own problems. The machinery of the High Court and of the County Court was completely disorganised, with a very heavy resulting financial loss. Then on the Armistice there followed a glut of litigation. There came also a general desire to examine afresh institutions whose weaknesses had been exposed during the period of stress. Thus both time and circumstance called

urgently for reform. Lord Birkenhead was a Conservative. But his conservatism was of the type which respects existing institutions so far as they have been found worthy, but which prefers to amend them rather than to suffer them to fall into decay.

In an article published in *The Times* towards the end of his Lord Chancellorship and reprinted in his volume of essays entitled "Points of View", he reviewed the attempts which he had made until then, and forecasted his future course of action. Some of the measures which he projected have made no progress. But a very substantial part of his programme has been accomplished either in the shape of statute or of administrative change. He built upon the foundations, or with the designs, of his predecessors where those foundations and designs had been laid and sketched on sound lines. "Each Lord Chancellor", he wrote, "can take up the work where his predecessors left it and receive from them—as I have received—most cordial support and most sagacious counsel." Some of the foundations which he laid and of the designs which he sketched have in turn been worked upon by his successors. But where he did not approve, he did not follow. Among Lord Haldane's pet schemes he doubted the practicability of establishing an Imperial Court of Appeal, and subsequent history has demonstrated his wisdom, and he rejected the idea of a Ministry of Justice on grounds fully set out in an article in the publication already mentioned. There is some reason to suppose that Lord Haldane, by the time when he entered on his second term of office, had changed his mind on this question. On other matters, Lord Birkenhead pressed on with characteristic vigour.

The first problem with which he was faced was that of the law relating to the transfer of land. The existing system, in his opinion, "is in its nature cumbrous and inadequate and requires drastic treatment to bring it into conformity with the business needs of the community". Two methods of approach presented themselves.

The reformers of the nineteenth century had in the Acts dealing with Conveyancing, Settled Land, and the duties and responsibilities of Trustees effected immense improvements in the system. Simultaneously they had rendered available a

system of land transfer by simple registration, and here Lord Birkenhead had as forerunners not only Lord Westbury, but the great Conservative Chancellors, Lord Cairns and Lord Halsbury. Yet since the close of the nineteenth century no progress had been made in the application of the system to the country generally. As the believers in the system had always preached, transfer by registration can only be successful where it is compulsory. In the last moments of the passage of Lord Halsbury's Bill, which became the Land Transfer Act, 1897, an amendment had been accepted enabling compulsion to be applied only when a County Council applied for it. This barrier did not exist in London. And there a compulsory system of registration on sale had been in force for more than twenty years. In the rest of the country a suspicion of bureaucratic control, the proved deficiencies of the system in certain minor respects, and the belief of a large section of the legal profession, whether well or ill founded, that the system was inimical to their interests and was bad in itself, had resulted in deadlock. No County Council had passed the necessary resolution. But instructed lay, if not professional, opinion was ready and eager for advance. One road would have been to abolish the County Council veto and to set on foot a gradual extension of the compulsory system area by area. This could have been effected by a Bill of one Clause, though it would have been desirable to take advantage of the opportunity to remedy the defects disclosed in practice since 1897.

Another path to reform lay in the direction of reforming the existing system of Conveyancing. Some such measure was urgently needed, even if transfer by registration were taken as the ultimate goal. For to complete a universal and compulsory system would necessarily be the work of years. Officials would have to be trained; buildings for the transaction of the business and the keeping of records would have to be constructed. Meanwhile, it was absurd that business should be cumbered with the remnants of mediaeval tenures such as copyhold, borough-english and gavelkind, or of the artificial doctrines and refinements of Tudor and Stewart lawyers, clustered round the Statute of Uses. The law of intestate succession to real property was inconsistent with modern theories as to the equality of the sexes. And even the Conveyancing and Settled

Land Acts, after many year's wear, were in need of amendment. Lord Haldane, with the aid of Mr. Wolstenholme, Sir Philip Gregory and Mr. (afterwards Sir Benjamin) Cherry, had made a vigorous effort to hack a way into and through the jungle. His attempt had failed partly by reason of the magnitude of the task, partly because of his departure from office. Then towards the end of the war a Committee, set up by the Minister for Reconstruction, under the Chairmanship of Mr. Leslie Scott, K.C. (now the Right Hon. Sir Leslie Scott), re-examined the subject. The Committee had the benefit of the ripe experience and ever-fresh ingenuity of Mr. (now Sir Arthur) Underhill, and later of Mr. Cherry. They sketched out a plan for the assimilation of the law of real property to that of personalty, or, to be more accurate, of chattels real, and for the simplification of many of the more complicated details of the existing law.

Lord Birkenhead, having a choice between these two paths, chose both. He thought that "the experience gained since the Act of 1897 came into operation proves . . . that the universal establishment of such a system (that is, of transfer by registration) is both possible and expedient". But he thought it impossible to wait for a reform of the law until such a system was made universal. The Law Society, convinced opponents of registration but eager and loyal promoters of all other reasonable reforms, were strong supporters of the Committee's plan. It seemed right to obtain the benefit of their support, and incidentally to secure the help of other professional circles, who were willing to facilitate the development of registration if, during a sufficiently long period, the new system were first given a trial.

Accordingly Mr. Cherry was set to prepare a Bill. He enlisted a body of learned and skilful members of the Chancery Bar, of whom Mr. Eustace Russell alone survives. Their gratuitous and self-sacrificing labours produced the Bill for what eventually became the Law of Property Act, 1922. As it now stands in the Statute Book, it covers nearly 312 pages. It contains 191 sections and 16 schedules. It is not light reading and the passage of it through Parliament was no light task. It failed to pass in 1920 and again in 1921, through lack of parliamentary time. There was a moment in 1922, when the

Bill was in the Commons, at which it seemed likely to perish, crushed by its own weight. It would be ridiculous to suggest that Lord Birkenhead could have passed an examination in every detail of the Bill. It would, on the other hand, be grotesque to fail to attribute to him a sound working knowledge of it and a firm grasp of its principles. He had to pilot it through the Lords, acknowledging, as he did, the generous help of Lords Haldane and Buckmaster, buffeted by the storms which blew from the darkest recesses of Lincoln's Inn. In the Commons, Sir Leslie Scott, who by now was Solicitor-General, conducted the Bill with equal tact and enthusiasm. But at every crisis of its fate Lord Birkenhead laboured for its life with a subtlety and an energy which were at last successful, and without which success would have been impossible. The Bill remodelled the existing law. At the same time it abolished the necessity for a resolution by a County Council. But it imposed a time limit, to date from the commencement of the Act, during which this necessity should continue. It was placed formally upon the Statute Book. But its provisions were not intended to come into operation until they had been consolidated with the existing Acts on the subjects with which it dealt. This process was not completed during Lord Birkenhead's Chancellorship. But by 1925 the work was finished and the great Act of 1922 is now embodied in a series of seven consolidating Acts, which, taken together, form the complete code contemplated in the original plan. They fill 574 pages of the Statute Book.

Other legislation of 1925 fulfilled a plan which Lord Birkenhead had devised and for which he had prepared the way. For in that year the Acts relating to the Administration of Justice in the Supreme Court were consolidated in the Supreme Court of Judicature (Consolidation) Act. But before that work could be accomplished, much had to be done, partly by Statute, partly by rules of the Supreme Court, partly by administrative measures.

During the earlier years of the Chancellorship, a minute examination was made of the administrative arrangements of the Supreme Court, resulting in very substantial economies, imposing a retiring age upon the Masters and clerks there employed, and making material changes in the pension arrangements of the former class of official. The coping stone was



put on this heavy labour by the Administration of Justice Act, 1922. The Rules relating to the conduct of litigation in the Supreme Court by and against Poor Persons were remodelled and the system into which grave abuses had crept, was put on a practical basis. Provision was made for the trial on Circuit of contested divorce cases in which Poor Persons were involved, and of other undefended divorce cases, Lord Birkenhead rejecting firmly the proposal that Poor Persons' divorce cases should go to the County Court. Effect was given by an Act of 1920 to the recommendations of a Committee set up by Lord Finlay and presided over by Lord Sumner on the Enforcement of Foreign Judgments in this country and of British Judgments abroad.

Simultaneously, measures were taken to improve the administrative machinery of the County Courts. The Act of 1919 imposed an age limit on future County Court Judges, coupling with the right to a pension on retirement an option to existing Judges to accept its terms. But the general need was to reorganise the existing system of appointment and tenure of the Registrars and their staffs. In all but a few cases, the Registrars carried on a kind of partnership with the State, their remuneration varying with the profits of their respective Courts, and falling away to almost nothing when the business of the County Court disappeared in war-time. The clerks were the servants of the Registrars without security of tenure, without age limit and without hope of a pension. Lord Birkenhead looked forward to a further devolution of work from the High Court to the County Court as a means of removing the pressure on the former. But further devolution was impossible until the Registrars should be rendered independent both of private practice as solicitors (which many of them carried on) and of violent fluctuations of income. The difficulties were increased by the fact that responsibility for the efficient administration of the Courts rested with the Lord Chancellor, while the Registrars were appointed by the Judges, and all the details of administration and accountancy were managed by the Treasury. These subjects were remitted to a Committee presided over by Mr. Swift, K.C. (now Mr. Justice Swift). The Committee did not report in time for effect to be given to their recommendations during Lord Birkenhead's Chancellorship, but he had



SWEARING IN LORD HEWART AS LORD CHIEF JUSTICE



already seen and approved them before he left office. By the County Courts Act, 1924, a complete reorganisation of the administrative machinery was effected; and as a result of the recommendations of the Swift Committee, the administration passed from the Treasury to the Lord Chancellor's Department.

Two major objects, to which the Lord Chancellor attached great importance, remain unfulfilled. In a letter of November 16, 1921, addressed to Sir Gordon Hewart, Attorney-General as he then was, the Lord Chancellor expressed his gladness "to learn that the Solicitor-General (Sir Ernest Pollock) and yourself concur in his view that a change should be effected in the position of the Crown as a litigant, and that for that purpose legislation should be introduced as soon as a Bill can conveniently be prepared". The main lines of any such legislation would be that the Crown would be placed in the same position as the subject as regards power to sue and liability to be sued in the County Court; that the Crown would become liable to be sued in tort; that the Crown would have the same capacity to recover and the same liability to pay costs as the subject litigant; that, with certain limitations, a litigant against the Crown would have the same right of discovery as one subject has against another subject; and that certain forms of procedure used in litigation by the Crown should be abolished. It was proposed, therefore, that a Committee should be established, to give to these proposals the detailed examination which they required, under the Chairmanship of the Attorney-General. The Committee was established accordingly, and, after years of labour, produced a draft of a Bill to effect the changes suggested in Lord Birkenhead's letter. Effect has been given to some of its minor recommendations in the Administration of Justice Act, 1933. But the major objects at which Lord Birkenhead aimed still await Parliamentary consideration.

Another subject which gave him anxiety was the remuneration of the Judges, both of the Supreme Court and of the County Court. He thought that "as a mere measure of justice as well as of expediency the salaries of both these classes require increase". Here again no progress has been made. Indeed, there has been a retrogression.

Some brief notice is called for of the administration by Lord Birkenhead of his judicial patronage. Those who have not

attained high office probably look upon the distribution of patronage as one of the more pleasant recompenses for the labours of the Minister. In truth, in modern days few spheres of administration are more anxious. As has already been stated, appointments to the office of Lord of Appeal in Ordinary and of Lord Chief Justice, Master of the Rolls, President of the Probate, Divorce and Admiralty Division and of the Lords Justices of Appeal are made by the King on the recommendation of the Prime Minister. It has also been suggested that most Prime Ministers do not act in such matters without consultation with the Lord Chancellor. During Lord Birkenhead's Lord Chancellorship, Lord Carson succeeded Lord Moulton as a Lord of Appeal in Ordinary; the office of Lord Chief Justice twice fell vacant and was filled by the appointment in succession of Mr. Justice A. T. Lawrence and Sir Gordon Hewart; Lord Sterndale succeeded to the Mastership of the Rolls on the death of Sir Charles Swinfen Eady and was himself succeeded in the Presidency of the Probate, Divorce and Admiralty Division by Sir Henry Duke; Mr. Justice Atkin and Mr. Justice Younger were appointed from the puisne Bench to the Court of Appeal as Lords Justices. For all these appointments, Lord Birkenhead must take a certain share of responsibility and must gain a certain credit. The appointments to the High Court made by His Majesty upon the recommendation of Lord Birkenhead as Lord Chancellor were those of Mr. F. A. Greer (now Lord Justice), the Hon. Frank Russell (now Lord Russell of Killowen), Mr. Rigby Swift, Mr. E. Acton, Mr. G. A. H. Branson, and Mr. Mark Romer (now Lord Justice). Ten Judges now sitting on the County Court Bench owe their appointment to him, in addition to those who, through death or age, have ceased to administer justice in that Court.

It would be extremely difficult to detect in these appointments any partiality for any type of political opinion or indeed any other object than to obtain the best man available for the vacant position.

A word must be added as to his general demeanour and his habits and methods in the discharge of business. He was an admirable judge—impressive, courteous and silent, for he constantly bore in mind, and frequently repeated, Bacon's aphorism

on a talkative judge. When sitting as Speaker of the House of Lords, he was less successful. Like Brougham, he found a difficulty in grasping the Lord Chancellor's "lesson". He had a trick of dropping his voice at the conclusion of a sentence, which was unexpected in a man whose natural element was oratory. And when his attention was not required for the business which was being discharged, he sat upon the Wool-sack with an air which closely resembled boredom, though, when he spoke or when he had to take part in business, he was at once alert. But his best work was done when he was despatching the affairs of his own office or was taking part in conferences or consultations. His mind was almost incredibly rapid. He was very quickly and easily instructed, and apprehended the points put before him—and incidentally detected the fallacies in them—so that to those who worked with him he always seemed to be moving more quickly almost than they could follow. This was partly the result of great natural ability. But it was also the fruit of prolonged meditation in earlier days. He often appeared to be improvising. Some of his decisions and some of his flashes of wit were no doubt impromptu. But others had been long meditated and were produced out of the storehouse of acquired knowledge. Thus, what seemed to be delivered on the spur of the moment, was seen, when reflected upon, to be the result of mature thought. Beyond all this—perhaps as a result of it—he had to an unusual degree the capacity for making use of other men's brains and other men's labours. Cynics have said that the best administrator is the man who never does anything for himself which he can find anyone else to do for him, and who always agrees with a difference. Lord Birkenhead swiftly decided whom he could trust. Where he trusted, he gave his confidence absolutely, but he retained and exercised the power to form the ultimate judgment and by some final touch to make authentically his own that which was presented to him by another.

### XIII

#### *A DETACHED CRITIC (1923)*

**I**N the Parliament of 1923 Lord Birkenhead played the part of a stern, but not on the whole unfriendly critic of the Conservative Government. He admittedly despised the Cabinet from which several of the ablest Conservatives were excluded. Mr. Bonar Law's returning ill-health, which forced him to take leave of absence in April and to resign in May 1923, hampered his leadership and stultified the Government policy. When Parliament met in February, the French occupation of the Ruhr was in progress, against the wishes of the British Cabinet, while Mr. Baldwin's settlement of the war debt to the United States was horrifying intelligent Conservatives. The Government's inability to decide whether or not to abandon the rent restriction policy adopted during the war had made it so unpopular that it lost three safe seats in by-elections, in one of which the Minister of Health, Sir A. Griffith-Boscawen, was beaten. On the other hand, Mr. Lloyd George was attempting to reorganise the Liberal Party, despairing of the recreation of the Coalition. His plan for a reunion of his National Liberals and the Independent Liberals was foiled by Mr. Asquith. But these Liberal manoeuvres had their effect upon Lord Birkenhead and Mr. Chamberlain. They tended henceforth to work for Conservative union rather than for a renewal of the Coalition. A sign of the change was Lord Derby's announcement on March 2, at a meeting of the Liverpool Working Men's Conservative Association, that "thanks to the mediation of a friend, Lord Birkenhead and I have shaken hands, and our friendship is as in the old days when he was F. E. Smith and I was Stanley". Lord Birkenhead's activities were watched and discussed with the greatest suspicion by a section of the Unionist Press, as when in March he entertained a number of

Mr. Austen Chamberlain's Conservative supporters to meet Lord Balfour. There was no truth in the suggestions often made at the time that he and Mr. Austen Chamberlain were trying to force their way into the Cabinet. But his relations with some at least of the Ministers had become perceptibly easier.

British disapproval of M. Poincaré's policy in the Rühr became more violent as the German resistance to French demands showed no sign of breaking down. The Entente had never been more sharply criticised, and men began to fear for the future. Lord Birkenhead drew attention in several speeches to French armaments, and especially to the overwhelming strength of the French air arm, which he and many other observers regarded as a menace to European peace. In the House of Lords on March 21 he declared that our Air Force was wholly inadequate. France would have 2,180 military aeroplanes by the year 1925, whereas we should only have 575. This, he thought, was a most alarming situation, when Anglo-French relations were far from satisfactory, and when the French occupation of the Rühr was inflicting an injury on Europe as a whole and on British trade in particular. While Lord Salisbury, on behalf of the Government, deprecated Lord Birkenhead's frank criticism of French policy, he admitted that our Air Force was weak. Lord Birkenhead returned to the subject in May and again in June, for the public were becoming alarmed, and he had the satisfaction of inducing the Government to sanction a very substantial increase in the Air Force, together with the formation of Territorial squadrons for home defence.

When the familiar theme of Upper House Reform was raised by Lord Newton in the House of Lords on March 22, Lord Birkenhead could not resist the opportunity of chaffing the "Die-hards" and their friends in the Cabinet. He shocked the Peers by describing Lord Salisbury and Lord Selborne as "the Dolly sisters"—two famous comediennes of the moment, whose frivolity reminded him of the "Die-hard" chiefs. They had denounced the Coalition Ministry for neglecting this vital matter, though it had in fact produced a reform scheme in July 1922. Yet the new Government had no plan of constitutional reform. Lord Curzon vaguely talked of dealing with



the subject in two or three years' time. But were the Government certain, asked their critic, that they would be in office two years hence, when they could not find a seat for their new Lord Advocate? Lord Birkenhead may not have foreseen that the Government would not last a year. But it was obviously in serious difficulties in the House of Commons. In a debate on the Rühr situation in March its majority fell to 48. Early in April it was actually defeated by 7 votes on the question of the ex-soldiers occupying posts in the Civil Service who were alleged to be receiving unfair treatment. The Labour Party, which seized the chance of voicing a popular grievance, created a scene in the House, delayed the Army Bill and eventually forced the Government to promise the improved pay and conditions which it had refused to the ex-service men. Mr. Bonar Law's absence made Mr. Baldwin's task as temporary leader extremely difficult. Mr. Churchill early in May revived the plea for a union of the constitutional parties against Socialism. He feared that if the Government collapsed within the next two years or earlier, the electors would be tempted to say "Let us give the Socialists a turn". Mr. Asquith's steady refusal to respond to Mr. Lloyd George's overtures made it unlikely that the Liberals could reunite, still less that they could be induced to form a new Coalition.

Mr. Bonar Law resigned office on May 20 and was succeeded by Mr. Baldwin two days later. The new Prime Minister was unable to relieve the tension in the party. Mr. Austen Chamberlain was not invited to rejoin the Cabinet. Addressing his constituents on May 26, Mr. Chamberlain said that he had thought that Mr. Baldwin wanted to reunite all Conservatives. But "certain forces" had prevented Mr. Baldwin from approaching him until the new Ministry was complete. These "forces" disliked Mr. Chamberlain's friendly relations with Mr. Lloyd George: they disliked still more Lord Birkenhead's persistence in advocating a revival of the Coalition.

Lord Birkenhead's considered view of the situation at this moment is set out in a long letter of June 1, 1923, to Mr. Chamberlain. He begged his friend to decide for himself in the event of his being offered a seat in the Cabinet, but to reflect well on the consequences. He wrote as follows:



AT ALGECIRAS, FEBRUARY 1923

LORD BIRKENHEAD, LADY PAMELA SMITH AND MR LLOLI GEORGE



*Private & Confidential.*

57 ST. STEPHEN'S HOUSE,  
WESTMINSTER, S.W.1.

1st June, 1923.

MY DEAR AUSTEN,—

Thank you very much for your full and frank letter. I reply to it by dictation only because I think it unwise having regard to my eyes to write long letters in my own hand.

I agree entirely with everything that you say in your letter, and I wish you most clearly to understand that not only shall I have no grievance of a formal kind (which would be absurd) but should the contingencies which you indicate be realised, I have not the slightest grievance measured even by the standards of a friendship as loyal as yours. And the last 12 months your friendship has been a very precious thing to me. It has been the closest political association which I have ever formed. For deep as my affection has always been for W., various circumstances, easily suspected by you, have prevented our political association from being complete.

I am concerned in the first place to relieve your mind absolutely from any anxieties in relation to my position. I am not quite in the helpless position of an ordinary Minister who leaves office for an indefinite period. I am the President in the absence of the Lord Chancellor of the Supreme Appellate Court of the British Empire. This position makes it certain that I shall find a field in which industry and ability will meet with their reward, until political changes offer me an opportunity. And I am able with my pen without any considerable exertion to rely constantly for two or three years upon an additional income of about £10,000 a year. I trouble you with these personal considerations because I am deeply concerned that you should decide upon your course, without the slightest anxiety on my behalf and with the knowledge that whatever you decide will be received by me not only with acquiescence but with friendly and sympathetic approval.

The argument in your letter which has most powerfully affected my mind is that in which you say that if you refused office if a joint offer were made to you and H., your position would be universally misunderstood, so that your influence and prestige in the Party must thereafter decline.

I agree without reservation to this view. Very likely it

dominates the situation, and must and ought to determine your decision. But it is just worth while examining an alternative. I am not even convinced of its wisdom myself, so that it will not be difficult to persuade me that I am wrong, but I am sure of this, that it at least deserves your examination.

What would be your position if you join this Government? Men, hopelessly inferior to yourself and much younger than yourself, will be in control of the Government. Of your new colleagues some are politically your avowed and bitter enemies. As you sit in Cabinet you can look round and identify those who tried to proscribe you from public life, and the mere fact of your joining may perhaps be regarded as an admission that the decision of the Carlton Club was right and that we were wrong. I could not, myself, make this admission, because I did not believe it then, and I do not believe it now. It is elementary that before forming a grave decision upon politics one should project one's mind into the future with such attempt at prevision as is attainable. I have never changed my opinion that the result of the next election must be unfavourable to the Unionist Party. If I am right in that anticipation, there is, in my opinion, complete vindication of our decision at the critical moment and of the course which we have since consistently pursued. And we should be in an extraordinarily strong position to resume negotiations with others from whom in the existing circumstances we do not disagree upon any important public questions. The history and influence of the Peelites are well worth careful study in the light of our present difficulties. We could not, of course, base decision and action upon mere speculations. Clear understandings would be necessary and I suspect would be obtainable. We should at least have had the satisfaction, if indeed we were right, and if the event proves that we were right, of having been content to wait patiently and contentedly until time had vindicated our judgment and our advice. I made it plain that I was much impressed by the difficulty of your position if you refused. I can only think of one way in which you could justify such a refusal, if indeed (and I am uncertain of this) such a ground would afford such a vindication. Could you not say that you had never opposed the Bonar Law Government and had no intention for that matter of opposing this; that on the contrary you had every

intention of giving them such support as was in your power. But that it had come to your knowledge that certain influential members of the Government had definitely and successfully objected to your inclusion in it at the present moment: and that in these circumstances it seemed to you that you could more usefully and with more dignity support the Government from without than within.

In a dictated letter I may not have put all these considerations as clearly as I should have wished. But I think I have made it plain that so far am I from urging this course to be followed that I am not even myself convinced either of its practicability or of its wisdom. But the step is a very grave one. I think it certain or almost certain, that you will have to make a decision, although I do not agree with you that Baldwin can honourably escape the McKenna commitment. It cannot therefore be anything but useful to examine, as I have attempted in this letter to examine, the advantages and the disadvantages of the two courses.

Whatever happens, I shall all my life, recall with unmixed pleasure and not altogether without emotion the twelve months in which we have worked together with so much intimacy, friendship and mutual confidence.

Yours very sincerely,  
F. E.

Mr. Chamberlain replied ten days later:

2 MORPETH MANSIONS, S.W.1.

June 11th, 1923.

MY DEAR FRED,—

You know me well enough to know that reserved and shy as I am I care very much about the friends that I do make. Your letter with its warm and generous friendship has touched me deeply—all the more deeply perhaps because I have felt more than I hope I showed the personal unfriendliness and personal discourtesy that has recently been my lot. So to that side of your letter I just say thank you from my heart and assure you that I too cherish the close friendship that we have formed in times of difficulty and trouble.

I took your letter away to the country on Saturday to think over it quietly. I have not reached a decision—I doubt indeed whether a decision can be finally reached until the time for

action comes—but you have suggested to me a line which may be possible and which certainly has great attractions for me. I believe that our wives are trying to arrange a quiet dinner or luncheon for us on an early day and I look forward to turning the matter over in conversation with you. I certainly will not do penance for our past actions. I believe now as then that they were right and wise, but I always had the fear that if a breach was once made in the Coalition its component parts might so drift asunder that except under pressure of something like a pressing national danger we might be unable to reunite them. In thinking over our course, we must think also of Lloyd George's probable action and of the reactions of his personality and position on our Party and on the country. But all these things can be better discussed and weighed orally than in writing.

Let us meet soon and meet often.

Yrs. very sincerely,

AUSTEN CHAMBERLAIN.

In the House of Lords on June 13 Lord Birkenhead raised the question of trade union privileges. Were the unions to continue to enjoy the right of compelling their members to subscribe to the Labour Party's political fund? As the law stood, a Conservative or Liberal trade unionist had to notify his unwillingness to subscribe, and thus ran the risk of being ostracised by his Socialist fellows. Should not the political levy be voluntary rather than in effect compulsory, and would not the Government take steps to modify the Act in that sense? Surely, Lord Birkenhead argued, the time had come to rally all moderate men against this ever-growing menace of a Socialist triumph. But the appeal fell on deaf ears. Lord Peel, for the Government, argued that the Labour Party was acting constitutionally and that there was no need for alarm. The Government feared to raise a fresh domestic controversy when it was faced with such trouble abroad and with labour difficulties at home.

Writing to Mr. Chamberlain on July 11, 1923, Lord Birkenhead summarised his reasons for being anxious about the political situation :

“Deeper reflection confirms my view that swiftly emerging changes will make plainer and plainer the inadequacy of the Government and

that no accession of individuals can save it. The Ruhr impasse, for which at least we were not responsible, presents an almost insoluble difficulty; it will be a terrible winter of unemployment. And I cannot see any advantage in joining inferior men who dislike one and who will presently founder under the weight of their own conceit and incompetence."

The Ruhr question alone was now indeed a source of the greatest embarrassment, for M. Poincaré, thinking that he had the full support of our "Die-hards", believed that he had only to maintain the French occupation in order to secure a German surrender. Lord Birkenhead in the House of Lords constituted himself the chief critic of French policy. On July 12 he said that the Entente could not last unless we made it clear that we must treat Germany with common fairness. On August 2 he went further. "Let us", he said, "withdraw our troops from Cologne and our Delegates from the Reparation Commission and leave France alone to settle with Germany as best she can." Lord Grey of Fallodon was shocked at such bluntness. Lord Curzon argued that there was still a hope of arranging matters amicably. But Lord Birkenhead's views found wide support in the nation at large, which was weary of the European turmoil and restive under French dictation of our policy. The session ended with the problem unresolved. Germany did not abandon her passive resistance till late in September. Meanwhile there had been renewed talk of Mr. Austen Chamberlain joining the Government, but nothing came of it. Early in August it seemed likely that Mr. Baldwin, who had remained Chancellor of the Exchequer, would give the post to Mr. McKenna, a Coalition Liberal who had lost his seat in 1922. But the proposal found little support in Conservative circles and was dropped when it was found impossible to induce one of the sitting members for the City to resign in Mr. McKenna's favour. Late in August Mr. Neville Chamberlain was appointed to the Exchequer, and again Mr. Austen Chamberlain's friends were disappointed. The divisions within the Conservative Party were still acute, and though Lord Birkenhead's personal relations with the Prime Minister had by now become more amicable, he profoundly mistrusted Mr. Baldwin's judgment. Lord Birkenhead's letter of August 15 to Mr. Chamberlain makes this clear :



CHARLTON,  
BANBURY.

August 15th, 1923.

MY DEAR AUSTEN,—

I am so glad you are going to make a speech at Birmingham. I do not of course ask, expect, hope or even think it wise that you should imitate what you will probably regard as my habitually impetuous contributions to the general tranquillity of the situation. But I thought very deeply about them, and they were written not on impulse, but as a result of very careful calculation.

I think Baldwin has gone mad. He simply takes one jump in the dark: looks round; and then takes another. And all around him there are yawning pitfalls in which he might find his own destruction, which would matter little, at any time. What is serious is that he takes our fortunes with him. It is not necessary, unless you wish to do so, that you should go an inch further than your really admirable speech in the House of Commons. But I very much hope that you will restate in the same kind of way and with the same kind of atmosphere your apprehensions.

R. is most anxious to be friendly to you and tends more and more to pin his fortunes to you. So far as he is concerned he has definitely abandoned—1, the present crowd; 2, the late crowd; and he sees in the future a reconstruction of which you are to be the head. This is also my desire.

I feel sure that the interests of the country, which I know well you put before everything; the interests of the Party; and your own require that the present situation should be studied most carefully and its opportunities not thrown away.

Forgive a dictated letter, but I am saving my eyes as far as possible. I sail on the *Mauretania* next Saturday, very reluctantly, for I feel that great events may be impending. It may even become necessary to resummon Parliament, if Baldwin blunders into any more reckless follies.

Yours very sincerely,  
F.

The time was soon coming when even the most prejudiced of Lord Birkenhead's opponents within the party would realise that they needed his help.

## XIV

### *AMERICA REVISITED (1923)*

**I**N 1923 Lord Birkenhead again visited America. He took with him his daughter, and Bevil Rudd, the Olympic quarter miler, as his secretary. He was again lavishly entertained. He played tennis at a country house with Rudd as his partner against two young Americans. He lost the first set and started disastrously in the second. The agitated hostess approached his daughter and asked: "Say, Lady Smith, is it etiquette for the Earl to be beaten? Because I can easily signal to them to lose!" As before, he made many speeches, principally on the subject of Anglo-American relations. After a speech in the Middle West a flapper came up to him and said: "Say, Sir Smith, I do like your twang," adding that it was the first time she had ever heard a "real Cambridge accent".

Mr. Rudd has provided an interesting glimpse of the American tour. He awoke one morning on the train at 7.30 feeling unwell and summoned the negro attendant. A few minutes later Lord Birkenhead appeared in the corridor, having been awakened by a noise outside. He saw the attendant passing down the corridor with a tray bearing a double whisky and soda and two aspirins. He asked the man what these were, and received the reply: "Massa Rudd's breakfast, sir!" Lord Birkenhead spoke seriously to Rudd and said: "This drink business has got to be got straight. I won't have my secretary drinking high-balls at 7.30 a.m. From now on there will be no drink before 5 o'clock in the afternoon." For the rest of the tour neither man touched alcohol before that hour.

It will be sufficient here to note the impression which Lord Birkenhead carried away from this visit to the U.S.A., and his reactions to the great problems of the moment. His views on Prohibition are of interest.

“The attack on alcohol”, he remarked, “was of course one of the most remarkable that any country has ever attempted. This drug has been used in one form or another almost from the twilight of the human race. Its effects were no doubt unfavourably illustrated on more than one occasion in the Old Testament. And names even as respectable as those of Noah and King David may be without unreasonableness, thanks to the care and frankness of the Old Testament chroniclers, enlisted on behalf of a teetotal argument.”

He greatly doubted whether the campaign for prohibition could have succeeded if two sets of circumstances had not converged to forward its career. First, the character of the saloons in the great cities of America was one of the scandals of the world. Every responsible American was ashamed of them. Yet they were powerful in the face of local and municipal assault. It seemed that only a national movement could destroy them.

Secondly, the temperance movement in the United States would never have attained practical results if it had not been assisted by a powerful impetus springing from the great employers of labour. As a moral movement it never attained to any great success. The war strengthened the sentimental forces behind it, and the financiers and capitalists threw their influence on the same side in the interests of efficiency of labour. The combination thus formed was the most powerful ever enlisted in the cause of prohibition.

Lord Birkenhead did not think that the States could easily recoil from prohibition. No one then could have foreseen the dramatic repudiation of that policy in 1933. For, as he said :

“Prohibition has become part of the constitutional Law of the United States, and has accordingly taken its place in that adamant cast iron surrounding in which so many artificial obstacles are opposed to the path of the reformer . . . and the political difficulties already great are enormously increased by a very singular circumstance. The resources of the bootlegging industry, its ingenuity, its ramifications, its influence and its organisation are little, if at all, understood in this country. And for the first time in the history of any country the whole influence of the drink trade, now an illegitimate and not a legitimate trade, is thrown upon the side of fanatical teetotalism. . . . Could a situation more savagely ironical be conceived ?”

Lord Birkenhead also discussed American problems in their relation to those of Europe. He found American opinion upon

the European situation fluid; a large section distrusted what it regarded as French "aggressiveness", while others firmly believed that Germany had, since the Treaty, systematically avoided the financial obligations which it imposed on her, partly by deflation, and partly by the wholesale transference of securities to the U.S.A. and other countries. He recognised that American citizens were prepared to support generously private charities in relief of the sufferings of Europe, but that Americans as a whole regarded with great distrust the continued uncertainty of European conditions, and tended more and more to congratulate themselves on the great national majority which repudiated the policy of President Wilson.

"Here", he said, "we touch at once the heart of the American attitude. President Wilson undertook responsibilities, and made commitments the like of which no former President of the United States had ever attempted. He pledged the support of the United States of America to a League of Nations which possessed some measure of super sovereignty. He did this without the slightest real indication that the American nation was behind him in the attempt; and with many striking danger signals that it was not. When I visited the United States in 1918 I incurred much censure by emphasising in an address delivered to the New York Bar Association and afterwards reprinted in *My American Visit*, the reasons which led me very greatly to doubt whether the American nation ever would, or indeed ever ought to, accept the League of Nations in the shape conceived by President Wilson. I was immediately assailed by the shrill idealists of two continents. . . . I can afford to dwell with some complacency upon this incident; for, so far as I am aware I was the only Englishman holding any public position, who quite plainly discerned from the first that there was not the slightest prospect that the United States, when consulted, would accept the League of Nations. . . . Naturally I have never blamed the United States of America for rejecting these proposals the moment an opportunity for pronouncing on them was afforded to the general body of citizens. But at the same time I must carefully guard myself from the criticism that I exonerate the people of America from a grave measure of responsibility for our present misfortunes. They are not, themselves, blameful for having rejected the Treaty of Versailles. In rejecting that Treaty they acted within the undoubted rights of a free people legally and even ethically. Had I myself possessed a vote in America I should undoubtedly have recorded it against President Wilson. Their responsibility springs from quite a different source; and it is a

very deep one. They are the authors of their constitution ; responsible for it ; and to be judged by international misfortunes which are caused by its imperfections."

It was clear to Lord Birkenhead that the Constitution legally empowered the President to represent in Europe the people of America. Europe herself had no choice in accepting him or denying him as the representative of that people.

"They were not only entitled, they were bound, to accept President Wilson as the authoritative exponent of American views and American wishes. A whisper, even, which could have been construed as disrespectful to this great man in the very zenith of his career would have been generally and very rightly resented all over the States. We must throw our minds back. This was the period of victorious intoxication. . . . Europe had no choice but to accept the workings and implications of the American Constitution. And however vivid may have been the apprehensions from time to time entertained by those who negotiated with President Wilson, upon the ultimate outcome, they could not, without risk of causing the gravest offence in America, treat him in any capacity except that of an exalted plenipotentiary.

"And so the long-drawn drama was played out. The United States were pledged to become a member of the League of Nations, and to all the obligations which membership involved. They were equally pledged, jointly with Great Britain, to a pact of mutual defence for the protection of France. Looking back it is easy to see how wholly alien both these obligations were to the traditional Foreign policy of the United States. I choose once again to recall that I pointed this out at the time. But the confidence expressed by the President, in language so sonorous and so splendid, influenced even the most sceptical of his colleagues. And even those who still doubted realized the impossibility and even the indecency of challenging his credentials."

Lord Birkenhead realised that it was impossible accurately to judge how many of the misfortunes of Europe were directly due to this soaring optimism.

He himself was not immune from attacks of a hysterical nature. An Irish-American wrote to him :

"All your Machiavellian efforts to get this country involved in your European entanglements will prove unavailing. You English are political crooks, thugs, hypocrites, treaty breakers, war mongers

and international disturbers of the peace. You want us to join the League of Nations so that you will get our young men—mostly Irish—into the front ranks, so that you may destroy the Catholic Churches, rob the U.S. Treasury, destroy the U.S. Navy, and render the country impotent by a long-drawn-out war, so that with the assistance of the Morgan-Kahn-Baruch group you will have the people at your mercy when you seize the government at Washington and put the Duke of York and Herbert Hoover at its head. You English degenerates will have to do your own fighting in future. You will never get a degenerate Woodrow Wilson in power again. We resent your impertinent intermeddling in our political affairs.

“PAT MAGUIRE.”

Another letter reached him about this time from a young lady signing herself “Miss Undine Percy Ferguson.” It was addressed to :

THE EARL OF BIRKENHEAD

Ex-Lord Chancellor of Great Britain,  
Big Bug, and a good looking Englishman,  
care British Embassy, Washington.

Miss Ferguson wanted his assistance to become a naturalised British citizen. To enlist his sympathy she added in her letter :

“I am considered very beautiful and to be perfectly made from the crown of my golden head to the soles of my high-arched feet.”

Lord Birkenhead at once instructed his secretary to arrange a meeting with Miss Ferguson at his hotel, but on the appointed day her nerve failed her and the meeting never took place.

The censures passed by Lord Birkenhead on Wilson did not pass unchallenged. On August 25 he received the following telegram from the *World*, one of the group of newspapers owned by Mr. William Randolph Hearst.

“VISCOUNT BIRKENHEAD,  
Care Paul D. Cravath, Saratoga, N.Y.

“Henry Breckenridge who was Assistant Secretary of War under President Wilson has protested to Mr. Davis President of the American Bar Association against your remarks at Williamstown concerning Mr. Wilson. He wishes the Bar Association to cancel its invitation to you. The protest will be widely published perhaps you would like to make your attitude in the matter perfectly clear. The *World*

offers its columns and would be pleased to have you telegraph whatever you wish to say.

“The *World*.”

Lord Birkenhead availed himself of this offer, and to allay anxiety in England Paul D. Cravath cabled to the News Editor of *The Times* :

“Lord Birkenhead received to-day at Minneapolis by Chief Justice Taft, Secretary Hughes, and Mr. John Davis. When he entered the Convention the whole audience rose and cheered tumultuously for several moments stop fact that I communicate this of course private but I do so because of ludicrous attacks which small section of press has made on Birkenhead.

“PAUL CRAVATH.”

Lord Birkenhead himself sent a cable to Mr. Marlowe of the *Daily Mail* concluding :

“. . . stop am sure that you and Lord Rothermere will be glad to make this known, having regard to a wholly insignificant Press attack which has been so much exaggerated by my enemies in England.”

We may conclude this chapter by giving an analysis of Lord Birkenhead's views on the problems left by the Great War. He believed the problems of the war itself, immense as they were, to be puny compared with the problems of the peace. Ten years were necessary to recreate the fabric of society after the Napoleonic wars the expenditure upon which in blood and treasure was as nothing compared to that of the Great War.

“It is no use”, he wrote, “abusing the treaty of Versailles. That treaty was the creature of the victorious mood of the victorious Allies. It is quite easy now to say that more moderate terms could and ought to have been imposed. The answer is complete. Human nature being what it is, no victorious nations could have reconciled with the determination of their democracies terms less severe upon a defeated enemy who had deliberately and wickedly for motives of national aggrandisement run the risk of submerging the whole of Western civilisation. President Wilson indeed came with a noble message of hope ; but unhappily in the sequel hope proved to be his principal equipment. . . . No nation in democratic conditions will ever be allowed to become the knight-errant of the world. The governors of each nation are the trustees of the whole people ; and unhappily they are removable trustees . . . and therefore it seems to

me that 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."

Lord Birkenhead expressed very definite views on the subject of war debts, and strongly resented the attitude adopted by other countries towards the position of Great Britain.

"It has sometimes seemed to us", he said, "that there is a general view, certainly held almost universally in Europe, that such is the simplicity of the British character that this nation can be relied upon not merely to adopt a course, so far unimitated by others, of paying our just debts, but that we are also to forgive everyone else whoever they may be, everything that they may owe us, whatever the cause of that indebtedness may be. . . .

"First of all it is always assumed in Germany that 'we shall have to pay something to France; we shall have to pay something to Belgium; we may have to pay something to Italy; but on a general accommodation it may surely be assumed that Great Britain will waive her claim.' The view of our allies was no more satisfactory.

"'It is quite true, in a pedantic, business sense, you may say we owe this money to you, but pedantry is one thing and sentiment and realities are quite different things, and you cannot, in view of the bloody road we trod together, ask us to pay you. . . .' Only the other day I observed that an eloquent and well-known writer in a French paper said quite plainly, 'Our debts,—our debts are the scars of war.' That of course is one way of looking at the matter. I rather wish it had occurred to us. We look at a debt of honour through different eyes. Another writer, this time an Italian writer, in an article which was brought to my attention ten days ago, made the following illuminating observation. He said: 'we are told that Great Britain is going to forgive us our debt to her. Well, a year ago we should have welcomed the assurance, but now it has been so generally assumed that it ceases to cause us any particular excitement.'

"Observe then where my unfortunate country is. We are not apparently to receive anything from the German reparations. We are, as is our wish, to pay our debts. . . . we who after all were not more conspicuously defeated than another nation are the only nation that is really paying indemnity, unless Germany pays some. This



is perhaps a surprising outcome of the rather remarkable efforts we made during those four years."

Lord Birkenhead did not shrink from telling his American audiences that in his opinion the state of Europe must grow progressively worse.

"We can say", he said, "to Europe: 'continue, if you will the ruinous courses to which you are committed; the British Empire will appeal to its own people; will develop its own markets, will concentrate its finances and its resources upon its own dominion'. And yet this is a part which I should be sorry to see carried to its sad and cynical conclusion. A tragic moment comes when nations which trod together so many years the bloody road of death, who breathed so many years the black air, almost of despair, say at the moment when the battle has been won after so much strength and so much endeavour, 'we carried through that incredible and man-destroying task; from the minor task of statecraft that remained we have recoiled in mutual estrangement'."

## XV

### THE TARIFF REFORM ELECTION AND AFTER (1923-24)

**L**ORD BIRKENHEAD returned in October 1923 from his American tour to find a changed political situation. The Imperial Conference had met on October 1, and side by side with it there sat an Empire Economic Conference to consider the possibility of increasing inter-Imperial trade. Preparations for the opening of the British Empire Exhibition at Wembley in 1924 were now in full swing. In view of the prolonged trade depression, aggravated by European unrest, all serious politicians were turning their thoughts to the possibility of finding larger markets for British goods in the Dominions and Colonies. Thus, when Mr. Bruce, the Commonwealth Premier, on October 9, told the Economic Conference that Great Britain ought to develop the policy of Imperial Preference, even if it had to be strengthened by the adoption of a Protective Tariff, he was assured of a more friendly reception than he would have had at any time since the Tariff Reform campaign of 1903-6. The President of the Board of Trade (Sir P. Lloyd Graeme) responded by announcing that the Government would propose a more generous measure of Preference for Empire fruits, sugar and tobacco. Sir John Simon, for the Asquithian Liberals, at once raised a cry of alarm at such taxes on food. It was perhaps not less significant that the National Farmers' Union wanted to know what the Government proposed to do for the British farmer.

A well-informed friend, writing to Lord Birkenhead on October 16, gave it as his opinion that the promised extension of Preference would not be opposed by all Mr. Lloyd George's followers, and possibly not by himself. But the correspondent doubted whether Mr. Baldwin would go any further in the direction of Tariff Reform and thought that, if he did, he would have to face the opposition of the newspapers controlled by

Lord Rothermere and Lord Beaverbrook. If the Government should seek a remedy for unemployment in Tariff Reform, the writer continued, "I should think them very bold and perhaps a little rash, for though I believe that the workmen have had such a spell of unemployment that they are now thinking more of work than of the price of food, I am not at all sure that the minds of the women voters will be affected in the same way, and our great female electorate is something of an enigma on this question".

The letter is quoted to show that even an experienced politician, who sympathised with Tariff Reform, had not the least suspicion in mid-October 1923 that Mr. Baldwin was about to declare for a tariff as the remedy for trade depression, at the Conference of National Unionist Associations at Plymouth on October 25, and even more definitely in a speech of November 2 at Manchester, where he proposed to tax foreign manufactures, to increase Imperial Preference, while allowing wheat and meat to enter free of duty, and to assist the home farmer. The country was thus plunged anew into a Free Trade and Tariff Reform controversy. Parliament was dissolved on November 16, and the general election was fixed for December 6.

Returning home in the midst of these exciting developments, Lord Birkenhead created a mild sensation—difficult indeed to understand when one reads the speech calmly years later—by the address which he delivered as Lord Rector at Glasgow University on November 7, 1923. He took as his title "Idealism in International Politics", and dealt faithfully with what he regarded as the ignorance and insincerity of many of its professors. "Politically and philosophically," he said, "the motive of self-interest not only was, but must and ought to be, the main-spring of human contact." The Great War had shown the folly of excessive idealism, and yet the extreme advocates of the League of Nations were repeating their old errors. "While I thought and think that there was and still is a modest area within which the League of Nations may make useful contributions to the harmony of the world, the larger claims made on its behalf always seemed to me frankly fantastic. Its framers forget human nature as absurdly as they neglect history." The Chadbands held up their hands in horror when they read such words, and yet, now that ten years have passed, what sane man

would deny this truth? The speaker went on to remind his audience that there had been wars and rumours of wars since the Armistice. "I do not myself know of a moment in the last four years in which there appeared to be less prospect of permanent peace in Europe than at the present time." "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 the different territories today?"

Lord Birkenhead repudiated the suggestion that he was a pessimist like "the sombre and unmoral genius of Nietzsche", or a war-monger like General Bernhardt. "The distinction must surely be drawn between him who calls attention to the risk of conflagration and the other who puts his torch to inflammable material." He went on to say, in words that were quoted everywhere: "The world continues to offer glittering prizes to those who have stout arms and sharp swords, and it is therefore extremely improbable that the experience of future nations will differ in any material respect from that which has happened since the twilight of the human race." But he made it perfectly clear in his conclusion—though his critics carelessly, or wilfully, misunderstood him—that he spoke in no bellicose spirit. "It is for us, therefore, to prove in our history a martial rather than a military people, to abstain, as has been our habit, from provocation, but to maintain in our own hands adequate means for our own protection, and, so equipped, to march with head erect and bright eyes along the road to our imperial destiny." Seldom has a Rectorial address excited so much hostile comment, not to say abuse, and yet, read anew at this distance of time, it seems merely to record plain facts with somewhat unusual frankness and with rare oratorical skill.

Lord Birkenhead did not conceal his alarm at the Cabinet's sudden adoption of a Tariff Reform policy and determination to appeal to the country. It seemed to him a crazy gamble, as the electorate was not prepared to consider the issue calmly and had not been fully informed. He was asked to help in the Lancashire election campaign, but he felt unable to act without Mr. Austen Chamberlain, his closest ally. When the Prime Minister appealed to them both for support, they readily agreed on condition that they were admitted to the Cabinet, if

only as Ministers without portfolio. But the Prime Minister, though personally anxious to admit them, was unable to overcome the reluctance of some of his colleagues, who objected to Lord Birkenhead in particular.

Lord Derby, who was Secretary of State for War at the time, has been good enough to give the following account of this curious episode. He says :

“ When a dissolution had been decided on, Mr. Baldwin requested me to go down and see him, and on my doing so he asked me whether I should be ready to see Lord Birkenhead and Mr. (now Sir) Austen Chamberlain in the Cabinet. His reason, I think, for asking me that was this : that I had always told him that I was not in the least anxious to remain in political life and that he could hold my letter of resignation over to such time as he desired and use it in any way that he liked, but especially would I welcome its being used to bring back our two old colleagues into the Cabinet.

“ On my reminding him of this, he then told me it was not his wish that I should resign, but that these two colleagues should be brought into the Cabinet as Ministers without portfolio, so that in going to the country they would be part and parcel of the Cabinet. I naturally was delighted at this idea and it was arranged that Lord Birkenhead and I should confer as to how best to fight the election in Lancashire. I went to luncheon with him and Sir Austen that day. We talked the whole matter over, and decided what part we should each of us play in the election. I parted from him, saying ‘ Well, there is a Cabinet to-morrow and of course I shall see you there.’ Judge of my surprise when at the Cabinet the following day I did not see either of them there. I made some enquiry and found there had been difficulties placed in the way of their re-entering the Cabinet by certain of our colleagues.

“ That was the end of the matter as far as I was concerned, and was my last connection in an official capacity with a Government in this country. I confess I was bitterly disappointed that the reconciliation that I had hoped for should have been postponed.”

The ex-Lord Chancellor did in fact respond to Lord Derby's invitation to speak in Lancashire during the brief election campaign, but he did so as an independent ally. It was a confused fight. The Ministry had only lost one minor member on the Tariff issue, but the party in the country was far from unanimous and many Unionist Free Traders were inclined to hold aloof. Mr. Lloyd George and Mr. Asquith

patched up a temporary alliance for a Free Trade campaign. The Labour Party was more united and more confident than either of the opposing parties and, as Lord Birkenhead had always predicted, it was to reap its reward. The Conservative organisers hoped against hope that they might retain their hold of the country, but they had not foreseen the growth of the Opposition vote, swelled, no doubt, by the female electors. In Lancashire the Conservatives fared badly, losing eight seats in Manchester and Salford, and two even in Liverpool. Mr. Henderson, the Labour leader, failed at Newcastle, and Mr. Churchill, standing in the Liberal interest at Leicester, was beaten by a Socialist. But in the country as a whole, the Conservatives lost heavily, in seats though not in votes, while the Labour and Liberal parties shared the gains. In the new House there were 258 Conservatives, 191 Labour men, 158 Liberals of the two sections, and 8 Independents. The safe Conservative majority had been dissipated. No party had a majority in the House.

At once there arose a Babel of conflicting advice. The Press, hostile to Mr. Baldwin, urged him to resign at once so that a Conservative-Liberal Coalition might be arranged, or at least attempted. Mr. Baldwin refused to consider resignation. The Labour Party decided that its leader should form a Government if he were asked to do so. Mr. Asquith, whose followers now outnumbered the Liberals professing allegiance to Mr. Lloyd George, did not declare himself immediately, but Mr. Lloyd George was inclined to support a Labour Ministry. To Lord Birkenhead the true course seemed clear. Writing in the *Sunday Times* of December 16, he insisted that Mr. Baldwin and Mr. Asquith must come to terms in face of their common enemy. The Labour Party was in a conspicuous minority, with less than a third of the House and less than a third of the votes cast at the polls. Most Liberals were as strongly opposed to the Socialist programme as were most Conservatives. Lord Birkenhead foresaw and dreaded the prospect of a Labour Prime Minister demanding a dissolution and appealing to the country on a frankly predatory programme of heavy taxation and the nationalisation of industry. Such a disaster could be averted by "a moderate exhibition of tact, common sense and statesmanship on the part of the leaders of the older parties". Mr. Asquith could agree to support Mr. Baldwin, or Mr. Baldwin

could agree to support Mr. Asquith, if Tariff Reform were dropped with other measures on which the older parties disagreed. Lord Birkenhead himself was prepared to support an Asquith Ministry rather than one led by Mr. Ramsay MacDonald. However, Mr. Asquith refused to associate himself with an anti-Labour Coalition. Mr. Baldwin, with the full approval of the veteran Lord Balfour, determined to retain his post and to meet Parliament. It was no time, as Lord Balfour told Lord Birkenhead, for "changing horses before crossing the particular stream which threatens to overwhelm us", however much he might deplore "the unhappy folly of the late election". Accordingly when Parliament assembled and Mr. Clynes moved a vote of want of confidence, the bulk of the Liberals voted with Labour, on Mr. Asquith's advice, and the Baldwin Ministry was defeated by 328 votes to 256. On January 22, 1924, the King sent for Mr. MacDonald, who accepted the office of Prime Minister. Lord Birkenhead's worst fears had been realised. Lord Haldane, as he had humorously suggested two years before, was now to be the Labour Lord Chancellor.

The first effect of the Conservative defeat, as far as Lord Birkenhead was concerned, was to bring him an invitation from Mr. Baldwin, on February 6, 1924, to join the "Shadow Cabinet". Mr. Baldwin also called Mr. Austen Chamberlain and Lord Balfour into his counsels, so that a long stride had been taken towards Conservative reunion. Lord Birkenhead had not been sparing in his condemnation of the "Die-hard" tactics which had failed so lamentably in the late election, but his adversaries were too conscious of their fatal blunders to renew their opposition to him, and from this time he resumed his place as one of the party's acknowledged leaders. The short Parliament of 1924 was to witness the growing disillusionment of the Liberals with the Labour Ministry which they had rashly undertaken to support without obtaining any guarantee of reciprocal benefit. Meanwhile, the Conservative Party, with its chief men working once more in harmony, was regaining strength and confidence.

Lord Birkenhead, after the fall of the Coalition, had begun to contribute articles to the Press, first on political matters and then on legal, social and literary questions—including, for example, prohibition, divorce, the need for cheap justice, and

Mrs. Asquith's memoirs. He found such work easy; he was always a great reader and had a good memory for what he read, and he could dictate an entertaining article at high speed. The demand for his work increased and he was encouraged to reprint his more important contributions in volumes which received a great deal of flattering publicity and had a large sale. A series of character-sketches of his leading contemporaries that he wrote in the winter of 1923-4 was particularly successful, appearing both in many newspapers and in book form. He continued his successful career as a journalist until after he became Secretary of State for India, and then abandoned it in deference to the advice of the Prime Minister, who took very seriously the objections raised by the members of the Opposition and ruled in June 1925 that Ministers must not write in the Press on matters of public policy. But to the end of his life Lord Birkenhead went on producing volume after volume of essays and studies which illustrated the breadth of his interests and the vigour of his intellect.

The most important political dispute in which he had to intervene in the summer of 1924 was that of the Ulster boundary. Under the Irish Treaty the boundary was to be determined by a Commission consisting of an Ulster delegate, a Free State delegate, and a chairman appointed by the British Government. The Free State Government, in July 1923, named Dr. Eoin MacNeill as its representative. The Government of Northern Ireland declined to appoint a Commissioner, so that the Boundary Commission could not meet. Mr. Cosgrave's Free State Ministry complained of the delay in settling the question. Free State politicians asserted that, during the Treaty negotiations, British statesmen had promised privately that the Commission would have full power to redistribute the territory assigned in 1920 to Ulster, and perhaps to transfer the counties of Tyrone and Fermanagh to the Free State. Lord Birkenhead, it was suggested, had been a party to such informal undertakings. He took the opportunity, therefore, when addressing, on April 30, 1924, the Liverpool Conservative Club, who presented him with his portrait, of denying that he had given the Free State delegates any assurances that were inconsistent with the terms of the Treaty. But he went on to say that, though the Northern Ireland Government was within its rights in refusing to nominate



a Commissioner, it would be well advised to do so. He himself held that the task of the Commission was "not to re-allocate disputable territory, but to adjust inconvenient boundaries"; this he had made clear when the Treaty was debated in the House of Lords early in 1922, and Mr. Collins and Mr. Griffith were thought to have accepted his interpretation of the boundary clause. He urged Ulster to appoint a Commissioner to determine the boundary in this sense, as it was essential that the Treaty stipulations should be loyally fulfilled and the Irish settlement completed. His speech was very moderate, but it drew a sharp reproof next day from the Ulster Premier, Sir James Craig, who described it as "the speech of an opponent and not of a friend". Ulster had no part, he said, in the making of the Treaty and would only agree to a Commission to report on, and not to fix, the boundary, as he had originally arranged with Mr. Collins. Sir James Craig's statement exasperated the Free State Ministers, whose opponents were always taunting them with their inability to obtain satisfaction of their claims from the British Government. At the instance of Mr. Cosgrave, it was then arranged that the Judicial Committee of the Privy Council should decide whether Ulster was required, under the Treaty, to appoint a Boundary Commissioner. The Judicial Committee ruled on July 31 that there was no such obligation. The Free State then insisted that Parliament should pass an amending Bill empowering the British Government to appoint a Commissioner for Ulster, so that the Commission might proceed with its task. Such a Bill was accordingly introduced on August 6, just before the House adjourned, and it was arranged that the House should meet again on September 28 to pass the Bill if Ulster had not by then agreed to appoint her Commissioner.

Lord Birkenhead's views on this troublesome controversy were fully and frankly expressed in a letter of this time to his closest political ally and friend :

CHARLTON,  
NORTHANTS.  
*22nd August, 1924.*

MY DEAR AUSTEN,—

I am very much concerned about the political future : and I am writing to you fully and frankly in order that you may know how my mind is working.

In the first place I hold the view, which I believe you share, that the Northern Government of Ireland ought to have appointed a Commissioner as was contemplated at the Treaty. That Government did not, in my opinion, run any real risk in doing so. Craig's absolute refusal, the result, no doubt, of his own difficult domestic position, has produced a situation which seems to me likely to bring disaster to the Conservative Party.

Any appeal to the electors which can be plausibly founded (as this can) upon the necessity of observing the obligation of national honour places the Conservative Party, if they oppose such an issue, in a difficult and indeed almost impossible position. My anticipation of the developments of the near future may be shortly stated. I think that the House of Commons will pass the proposed legislation by a considerable majority: and that the result of the discussion will be to consolidate Labour and Liberal Parties; while disclosing some slight difference of opinion even in the ranks of the Conservatives. If all the Conservative leaders resist the proposed legislation the House of Lords will be placed in an extraordinarily difficult position. It is my deliberate view, though I hold it less certainly than I did, that they would, in the circumstances supposed, throw out the Bill. Such a step on their part would "fall as the gentle rain from Heaven" upon the election prospects of the Socialists. It is certain that they would demand and obtain an immediate dissolution: and it is in my judgment almost equally certain that they would succeed in the consequent election. In such an election they would have the support of the Liberal Party with whom they would probably make some arrangements in the constituencies. One of the issues once again in the event supposed would be the objections in democratic days to a hereditary chamber.

Carrying my anticipation further, when Parliament reassembles after the election the Bill will be carried and forced at that date by the decision of the electors. The Commission will be set up, and in my clear opinion will decide in favour of the Ulster contention. Ulster therefore will receive then, what if I am right she could obtain today: but in the process of obtaining it she will have destroyed the only party which genuinely befriends her cause, and the only branch of the legislature to which, in a crisis, she can look for constant and courageous support.

You will reasonably ask me whether I have anything to suggest: for all these probable happenings must have occurred to your own mind. Speaking for myself I reject entirely the proposal that we should attempt to amend the Treaty by inserting words in the proposed Bill which elucidate the meaning of the disputed article. We have no more right to do this than the Dail has. The Free State Leaders are not fools, and they would immediately retort that if one of the parties in a bilateral treaty could make unilateral and later alterations in this text the same faculty may be claimed by the other. And this contention would be justified. I cannot, therefore, myself either recommend this course or justify it in argument; and I should feel the greatest difficulty in giving even a silent vote in its support; for my present view is that if such an amendment were carried we should inflict a mortal blow upon the good faith of this country and involve our own party in absolute destruction. If we lost the election we should obviously be ruined: if we won it we should be confronted with a task in Ireland for which I greatly doubt whether I could assume any degree of responsibility.

The plain truth is that, rightly or wrongly, we offered to the Free State representatives a certain consideration for their signatures. The consideration was that a Commission should be created, three members of which should be nominated, one by us, one by the Free State and one by the Northern Government. We either possess or we do not possess the constitutional power, when confronted by a refusal of the Northern Government, to appoint a representative to pass legislation enabling ourselves to make a substituted nomination. In my opinion we possess such a power. If we do possess it, my present opinion, upon which I shall not of course act until I have seen you, is that we are bound in virtue of our signatures to make such a nomination. The Northern Government has in fact already so far recognised the Treaty as to avail itself of an option which only came into existence in virtue of that Treaty. In my judgment it is futile to reply that certain extremists in the South of Ireland, and many organs of the Press, are making excessive and even absurd claims for the possession of Ulster territory. Every one of us knew that such claims had been made in the past and would be made in the future. We decided that they

should be pronounced upon by a Commission. We decided upon the appropriate formula for reference to this Commission. Having satisfied ourselves that the words employed were only capable, upon a fair and competent construction, of the meaning which we placed upon them, we assented to the addition of other words at the earnest entreaty of the Irish negotiators. We should not have agreed to the insertion of these words if we had not believed that they were powerless to affect the meaning of the article taken as a whole. But holding this belief, and accepting the responsibility of it, we were not prepared in the desperate circumstances of our negotiation to run the risk of a breakdown by objecting to the inclusion of words which apparently made it easier for the other side, but which we were satisfied could not change the plain meaning of the article upon which the Commission had to pronounce. In other words, we agreed upon a reference to the Commission which many of us knew to be disputable but which we were certain could only be decided in one way. But having agreed to one form of reference I am clearly of opinion that we cannot amend it or redefine it without the consent of the other contracting party. Once again then you will ask me what we ought to do. I can only answer this question by telling you what, in my opinion, James Craig ought to do. In what I am about to suggest I make the fullest allowance for his domestic political difficulties, and indeed I am fully aware of their pressure and weight. He has to deal with a body of extremist opinion which neither he nor anyone else can completely control; but which perhaps he can control better than anyone else. Evidently, therefore, he must not be asked to do anything which is impossible or which may result in the substitution of a less experienced successor for himself.

At the same time it is neither in the interest of himself nor of his Government that he should wreck the Tory Party and the House of Lords: and at the end perhaps, or even before, find himself in collision with the British constituencies and forced to the very issue, rendered a thousand times more formidable in the events supposed, before which he is recoiling today.

He must, therefore, take some responsibility and confront some risk. But neither in my opinion is serious.

His attitude ought to be this. "I will not appoint a Com-

missioner. I object to the British Government appointing one upon my default. Ulster members will vote against it reinforced by such independent support as they may receive in the Unionist Party. If in spite of our proposals you choose to pass such legislation we shall watch the result with interest. If the Commission decides, as you tell us it must, in favour of our contention, though we shall still think that it was irregularly and even unconstitutionally set up, we should naturally acquiesce in its decision. But if that decision is based upon the construction of the article which you have always assured us was neither contemplated nor competent, having regard to its language, the Northern Government will consider its own position and retain its freedom of action."

You will observe that it does not particularly matter what Craig says provided that the Commission is set up without the disastrous consequences to us as a party which I foresee if we become irretrievably committed to Craig's cause at this moment. The vital point is that we should not run a risk of damnation wholly unnecessary while there exists a real chance and even a great probability that the Commission will decide in our favour.

I have dictated this long and I fear somewhat inconsecutive letter in the pressure of much other work and at a moment of very grave domestic anxiety; for my brother Harold is dangerously ill. I do not wish this latter circumstance to become known; for neither he nor his wife knows how ill he is. I mention it only because I know that you and Ivy will be grieved to hear it, and to explain why I have not written to you before.

I shall, I repeat, say nothing and do nothing which will in any way commit me until I have had the opportunity of full discussion with yourself. But it is certain that in the near future both you and I and the other Unionist signatories of the Treaty will be confronted with a decision which will perhaps be the gravest that we have ever been called upon to take.

You might perhaps send this letter or a copy of it to Arthur Balfour and (if you think proper) to Horne and to Worthington Evans. I do not send it myself because I wish to have the advantage of your opinion as to the advisability of sending at this moment a letter written in these terms to our colleagues.

Yours very sincerely,

F. E.

During the recess Lord Balfour published a letter which Lord Birkenhead had written to him on March 3, 1922, assuring him that there was no danger that the Boundary Commission would make drastic alterations in the Ulster frontier. The letter confirmed the truth of Lord Birkenhead's speech of April 30, and the forecast in the letter just quoted, but it had no effect on Northern Ireland Ministers, who maintained their refusal. Consequently, Parliament resumed on September 28 and passed the Irish Free State (Confirmation of Agreement) Bill through all its stages. Mr. J. R. Fisher was appointed Boundary Commissioner to act for Ulster, Mr. Justice Fectham was nominated chairman, while Dr. MacNeill remained as the Free State representative. To complete the story, it may be said that Dr. MacNeill found himself in complete disagreement with his fellow Commissioners—who, according to the *Morning Post*, proposed to give part of Donegal to Ulster—and resigned his post. In December 1925 Mr. Baldwin had accordingly to make a compromise with Mr. Cosgrave, under which, in return for monetary concessions, the Free State accepted the existing boundary as final. Lord Birkenhead had the satisfaction, on behalf of the Conservative Ministry, of passing the Bill through all its stages in the House of Lords on December 9, 1925. He admitted then that in the boundary clause of the Treaty "there lurked the elements of dynamite". But the Treaty, he said, could not have been ratified without the clause, and the Coalition Government had therefore taken the risk of accepting it in the hope that the years would bring appeasement. Thus a troublesome controversy was brought to an end.

The difficulty with the Free State and Ulster had, in the autumn of 1924, been completely overshadowed by political developments in England. The Labour Ministry had exasperated Liberals as well as Conservatives, by its conclusion of a Russian Treaty, involving the guarantee of a loan to the Bolshevik régime, and by its withdrawal of the proceedings against R. J. Campbell, editor of the *Workers' Weekly*, on a charge of inciting the sailors and soldiers to refuse to fire in a military or class war. A Liberal motion for a Select Committee to inquire into the Campbell case was carried by 364 votes to 198 on October 8, and next day Mr. MacDonald announced his intention to appeal to the country. The publication of a letter from Zinovieff, the

chief organiser of the Communist Party in Russia, to his adherents in England opportunely revealed to everyone the true nature of the people with whom the Government had just made a treaty, and to whom it had promised a loan. The Foreign Office recognised the authenticity of the document by publishing the sharp letter of protest which it had addressed to M. Rakovsky, the Russian Ambassador in London. The nation was shocked and the Government discredited. Lord Birkenhead, in a vigorous article in the *Daily Mail*, showed how great was the influence of Moscow in the councils of Labour and recalled the proposal that the *Daily Herald*, edited by Mr. Lansbury for the Labour Party, should receive a Bolshevik subsidy. At the general election on October 29 the Conservatives won a decisive victory, securing 413 seats. The two sections of Liberals lost 103 seats and retained only 40 between them; Mr. Asquith was defeated at Paisley. The Labour Party was reduced from 193 to 151. Of the votes cast, the Conservatives polled nearly eight millions, Labour five and a half millions and the Liberals less than three millions. Five days later, Mr. MacDonald resigned office, and on November 6 Mr. Baldwin formed a new Cabinet, in which Mr. Austen Chamberlain was Foreign Secretary, while Lord Birkenhead, who had declined to return to the Woolsack, became Secretary of State for India. He was the first ex-Lord Chancellor of England to hold another Cabinet office since 1784, when Lord Camden was made Lord President of the Council. The new Government was generally recognised to be exceptionally strong and coherent, and Lord Birkenhead's appointment won praise even from the *Manchester Guardian*, the chief organ of independent Liberalism.

"There is special reason", wrote the *Guardian*, "for satisfaction with Lord Birkenhead's appointment to India, because of the admirable stand which he made on behalf of just and humane government in that country when the House of Lords passed their lamentable resolution on the Amritsar massacre in 1920. His speech on July 19 of that year was as soundly Liberal a speech on the essentials of Indian policy as could be desired. If Lord Birkenhead administers the India Office in that spirit, which is the spirit of Burke and of Lawrence, he will not go far wrong."

The veteran Sir Edward Clarke, while delighted that his young friend was again in the Cabinet, wrote to express regret

“that you are not again on the Woolsack to carry out, as I hoped you might do for many years, the splendid judicial work which you were doing when, to the great misfortune of the country, its course was interrupted.” “Every lawyer but one will share my regret.” “But it has occurred to me,” Sir Edward continued, “that there may be another explanation in the fact that Lord Reading’s term of office is nearing its end. Perhaps the Vice-Royalty attracts you. It is a post of unique splendour and authority, and had its attraction for Canning and Disraeli, although in each case the changeful circumstances of politics led both of them to the only political post which is higher still.”



*SECRETARY OF STATE FOR INDIA (1924-28)*

**A**LTHOUGH Lord Birkenhead had never visited India, he was deeply read in its history and strongly imbued with its atmosphere. The story of India appealed to his adventurous mind as a record of colour and romance, and the clash of virile peoples, of stately Indiamen riding at anchor in the mists of Gravesend, before sailing forth on their six months' voyages; of the wild Mahratta hordes scouring the tableland of the Deccan, of the columns of the Company's armies winding through parched hills to the relief of distant fortresses; of the absorption by a small mercantile body of a vast dominion. Early visions of those supermen were in his mind—of Hastings feverishly labouring to preserve an Empire against the lightning-lit background of the European War; of Wellesley's gorgeous imagination sweeping onwards to dreams of universal and benevolent sovereignty; of Dalhousie setting his signet to the policy of subsidiary alliance; and of the unchained passions of the Mutiny.

Lord Birkenhead assumed the direction of our Indian policy at a very critical period. The measure of self-government which had been granted in 1919 under the Montagu-Chelmsford Scheme had by no means satisfied the advanced Nationalists, as its authors expected it would do. On the contrary, they had in large measure declined to co-operate in working out the reforms, and the extremists had resorted to criminal practices in the hope of making the task of the British administration impossible.

Lord Birkenhead found himself in co-operation with his friend, Lord Reading, who had been Viceroy since 1921. In the private correspondence which took place between them, we can see a notable characteristic reappearing in the Secretary of State. He was now at the head of a great public depart-

ment; he was set the solution of a strange and profound problem. He had turned with relief to the new field. The daily drudgery of the Woolsack for four years had irked a mind never adapted to sedentary labour. Turning aside from the legal and political world, which he knew so well, he was to browse in new and wide pastures. Indian administration is the domain of the specialist: Lord Birkenhead fully realised that working under him was a permanent staff fully equipped with special knowledge; he realised also that some time must elapse before even his acquisitive mind could comprehend the true perspective of the Indian problem. He approached his task in no spirit of sanguine hope, but yet with certain basic convictions which were confirmed in his mind long before he was familiar with the minutæ of administrative routine. One conviction was a profound distrust of the Montagu-Chelmsford policy, and a belief that India would not be capable of supporting Dominion Status for centuries. Another was that the British were in India for the good of India and that the maintenance of British prestige was of vital importance.

Lord Birkenhead's true opinion of the Montagu-Chelmsford policy, an opinion which he could only hint in a muffled whisper in his speeches, appears again and again in the course of his private correspondence with Lord Reading and Lord Irwin. We find him writing to Lord Reading on December 4, 1924:

"I think you know that alone in the Cabinet I distrusted, and indeed to some extent opposed, the Montagu-Chelmsford Report. To me it is frankly inconceivable that India will ever be fit for Dominion self-government. My present view is that we ought rigidly to adhere to the date proposed in the Act for a re-examination of the situation, and that it is not likely, unless matters greatly change in the interval, that such a re-examination will suggest the slightest extension. In the meantime, little as I have liked diarchy, obviously it must be given its chance. . . ."

And in January 1925 he wrote:

"In ultimate analysis the strength of the British position is that we are in India for the good of India. The most striking illustration of the truth of the position is supplied by the infinite variation of nationality, sect, and religion in the sub-continent. The more it is made obvious that these antagonisms are profound, and affect immense and irreconcilable sections of the population, the more con-

spicuously is the fact illustrated that we, and we alone, can play the part of composers. . . .”

He confessed that he did not like the detention of political prisoners without trial, under the special Bengal ordinance lately sanctioned by the Socialist Government, but he recognised its necessity. He told Lord Reading that the extreme Nationalist agitation for “Swaraj” or Home Rule inclined him rather to contract than to expand any further promises of constitutional reform. He put his finger on the real obstacle to democratic institutions in India, namely, the communal question, the age-long hatred between Hindus and Mohammedans. “All the conferences in the world”, he wrote, “cannot bridge the unbridgeable.”

How grave the situation was may be seen from the fact that in his first speech on India, on March 31, 1925, he had to commend his Socialist predecessor, Lord Olivier, for authorising a severe ordinance under which the Bengal Government could proceed against the terrorists. Twenty-seven of their leaders had been put under lock and key and the campaign of murder and outrage had been checked. Mr. Das, the Bengal Nationalist leader, had recently dissociated himself from the party of violence. He should, however, go further and assist the Government in stamping out the criminals. For the goal of responsible government in India could never be reached by the road of violence, attended by desperate crime. Such were the beginnings of Lord Birkenhead’s four years at the India Office.

On July 7, 1925, Lord Birkenhead formulated his views on Indian policy in a long speech in the House of Lords. It was a full survey of the present conditions in India, economic and political, an analysis, province by province, of the workings of the reformed constitution. This speech, studiously moderate in tone in comparison with the letters which Lord Birkenhead wrote when out of office, yet held out no hope of an immediate or large increase of constitutional privilege. Dealing first with the Indian Budget, he described the retrenchments in administration and military expenditure, which had closed the five years period of heavy deficits, which ended in 1923; he then passed to a survey of the present position of Indian trade and agriculture. The adverse balance of merchandise on private account in 1920-1 was by 1922-3 restored to a favourable

balance, and exports exceeded imports by Rs.80 crores, which rose in 1923-4 to Rs.134 and in 1924-5 to Rs.150 crores, which Lord Birkenhead described as a record in the history of Indian trade.

Speaking of the agricultural position he took the view that a vast increase was attainable in the yield and prosperity of agricultural India, and "that a period of incalculable prosperity awaited India, if and when she learned fully to realise and to value her agricultural kingdom". The great difficulties to be surmounted were the stubborn conservatism of the peasant proprietor, and the infinite sub-division of ownership.

He then passed to the eagerly awaited pronouncement on constitutional reform, and we are struck in reading his speech by the caution with which his opinions are expressed. He referred to the preamble of the 1919 Act, and repeated that :

"the whole message, as we understand it in India, with all that it involves in the storied past, in the critical present, and the incalculable future, is to be read in that preamble. We shall not be diverted from its high obligations by the tactics of restless impatience. The door of acceleration is not open to menace: still less will it be stormed by violence. But there has never been a moment since the constitution was adopted, in which the Government of India, acting in harmony with the Government at home, has not been vigilantly and attentively considering the spirit in which the present reforms have been received in India. It has indeed been an imperative duty for my predecessors and myself so to consider them. Wise men are not the slaves of dates, rather are dates the servants of sagacious men."

He proceeded to review the working of the reforms, province by province: at the end of his review he declared that no dogmatic answer could be given to the question: "Has the Constitution succeeded?" It had neither altogether succeeded nor altogether failed, but "where it had succeeded, the price of success had been a very considerable inroad upon the diarchical principle", and when the moment for revision came, everything would be thrown into the melting pot. Diarchy was not a sacred principle, but a doctrinaire and artificial conception.

He spoke of the obstructive tactics of the most powerful party in India, the Swarajists, and how one of their principal grounds for complaint was that no constitution made in the West could be considered in the East. To this he replied :

“Let them produce a constitution which carried behind it a fair measure of general agreement among the great peoples of India. Such a contribution to our problems would nowhere be resented. It would, on the contrary, be most carefully examined by the Government of India, by myself, and I am sure, by the Commission, whenever that body may be assembled.”

The conclusion of the speech was ominous for advanced opinion in India :

“The terms of the Preamble are even now not incapable of realisation. But we must first expel and exorcise the demon of suspicion. We ask the Indian people to-day with the deepest sincerity for good will and co-operation. But while it is an object close to our minds to create this atmosphere, I should be guilty of disingenuousness if I painted at this moment the prospects in colours too vivid, or too sanguine. I am not able, in any foreseeable future, to discern a moment when we may safely, either to ourselves or India, abandon our trust. There is, my Lords, no ‘lost Dominion’, there will be no ‘lost Dominion’ until that moment, if ever it comes, when the whole British Empire, with all that it means for civilisation, is splintered in doom. . . . We no longer talk of holding the gorgeous East in fee; 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 proudest days of Indian history.”

The tone of this speech impelled Lord Hardinge, an ex-Viceroy of India, to write to Lord Birkenhead :

20 BRYANSTON SQUARE, W.I.

*July 7th, 1925.*

MY DEAR BIRKENHEAD,—

As an ex-ruler of India, I must send you one line to congratulate you very warmly on your speech of today. It is just what is wanted in India and will do an immense amount of good. It will encourage the moderates to rally to the side of Government and put heart in the services, and pulverise false Indian ideals. It was a joy to listen to it.

Ever yours,

HARDINGE.

Meanwhile Lord Reading's period as Viceroy was running to an end. Rumour had connected the name of Prince Arthur of Connaught with the vacant post. Lord Birkenhead wrote

to the Viceroy to urge the impossibility of the suggestion. But the right man was not easy to find. Lord Birkenhead wrote :

MY DEAR RUFUS,—

Still for another week I am unable to discuss with you your successor as a settled conclusion. The Prime Minister has been so busy with the return of the Prince of Wales and triumphant entry of Austen after Locarno, and the King so completely taken up with the first of these two events, that it has not been practicable to reach a decision. Long before you receive this letter I shall be able to telegraph you definitely. Everything here has been extraordinarily quiet politically : nothing indeed has happened except that the Attorney-General has directed the prosecution of some ten of the leading Communists of the country. . . .

A week later he was able to wire to Lord Reading announcing the appointment of Mr. Edward Wood as Viceroy. There has been preserved an envelope evidently lying upon the table at a Cabinet Meeting when the issue of succession was still in doubt. There are two scrawled sentences in pencil :

Any luck about Edward Wood? F. E.

He is to give me his definite and final decision tomorrow.  
S. B.

On October 29, 1925, he was able to write to Lord Reading announcing the appointment of Edward Wood as Viceroy, and speaking of his personal character in terms of the warmest admiration :

“I am writing this afternoon to inform you of the appointment of Edward Wood to the Viceroyalty, and asking you to make simultaneous publication to-morrow morning. In the end, and after deep consideration, I only submitted two names to the Prime Minister, both of them colleagues of ours in the Cabinet. Either of them would, in my judgment, have made a very good Viceroy, with whom I could work in easy and sympathetic relationship. I am perfectly satisfied with Wood. He is a man of the highest character, of very considerable ability, great courtesy of manner, and of distinguished appearance. He is putting out to sea in calmer waters than those which awaited you. But no one knows better than you do that our anxieties are not over, and I am sure that in the actual situation and in any that is foreseeable in the next

three or four years, Wood is the best man that we could have got. He has small children, and a very old father. He was not really at all anxious to go, though I think the disinclination was only due to these causes. . . .”

At the time this appointment caused Lord Birkenhead nothing but satisfaction, and next month we find him writing :

“The reception of Wood’s name in the Press has been extraordinarily favourable, even a little surprisingly so. I hardly noted a single discordant word. How much better is life and how much more paying it is to be blameless than to be brilliant ; and it certainly pays in such a connection never to have attacked anyone. But as a matter of fact, as I have already told you, I have a real admiration for his character and for his quiet but solid qualities. He is really very intelligent, will count no labour excessive, and will not be easily deflected from any course which he has persuaded himself is right. I am really very happy about the whole business, for though I naturally do not know him anything like as well as I know you, I know enough of him to make it certain that my association with him will be harmonious, and I hope that it may prove useful and fruitful.”

In December 1925 he turned to the appointment of the Statutory Commission. He had already written in November to say that if the behaviour of the Swarajists improved, he would expedite the appointment of the Commission. This letter shows how strongly he recoiled from the possibility of the Socialist Government handling the appointment of the Commission. On December 10 he wrote :

“I wish, in the first place, to write to you on a matter of high Indian politics, which has lately been exercising my mind, and which, though you have only four months left in India, must afford a high measure of concern to you.

“When I made my speech in the House of Lords suggesting that it might be possible to accelerate the Commission of 1928, if some measure of co-operation were forthcoming in India, I always had it plainly in mind that we could not afford to run the slightest risk that the nomination of the 1928 Commission should be in the hands of our successors. You can readily imagine what kind of a Commission in its personnel would have been appointed by Colonel Wedgwood and his friends. I have, therefore, throughout, been of the clear opinion that it would be necessary for us, as a matter of elementary prudence, to appoint the Commission not later than the summer of 1927. . . .



LADY PAMELA SMITH, LORD FURNEAUX, LORD BIRKENHEAD AND LADY ELEANOR SMITH





I should therefore like to receive your advice if at any moment you discern an opportunity for making this a useful bargain counter or for further disintegrating the Swarajist Party. . . . The Swarajist Party at this moment is undoubtedly torn by divided counsels. The reasonableness of the attitude disclosed in your speeches and mine has already inclined many important members of that party to advocate co-operation. Surely their number would be greatly augmented if it were *known* that they could obtain what the other Swarajists cannot confidently count upon—acceleration. I shall myself abstain from making any speech which is in the least definite upon these lines until I hear from you. And you would, I think, be well advised to do the same. But I am sure that, having regard to political contingencies in this country, we must keep the nomination of the personnel of this Commission in our own hands. In this matter we cannot run the slightest risk. My present view, therefore, is—and I believe that the Prime Minister shares it—that we shall in any event, playing for safety, be driven to nominate the Commission in the middle of 1927. If such an acceleration affords you any bargaining value, use it to the full, and with the knowledge that you will be supported by the Government. . . .”

By May 1926 Lord Reading's Viceroyalty was concluded, and Mr. Wood, now created Lord Irwin, was in his place. The important question arose as to whether or not Indians should be represented upon the Commission. Lord Birkenhead and the Viceroy were agreed that there should be no Indian Commissioners, that the advantages of having Indians on the Commission were outweighed by the disadvantages. They knew the arguments in favour of including Indians on the Commission. They admitted that their inclusion would secure that the Commission would command the largest degree of confidence in India, and that a Commission without Indians could command no such confidence. But the arguments against inclusion were insuperable. If there were only two or three Indian members on the Commission it was clear that they would be quite unrepresentative of true Indian opinion. If all the various interests were represented, the Commission would become a body of very considerable size. Unless the representatives of Indian opinion were duplicated or triplicated, any given interest would have ground of complaint that it was not represented in membership of a particular sub-committee, the investigations of which it regarded as of primary importance.

Also, in such a large body the prospects of an agreed Report would be infinitely remote.

But although Lord Birkenhead realised the difficulties which faced inclusion, he saw that some method of consulting Indian opinion must be found. And it becomes clear that he envisaged the possibility of a Round Table Conference as early as 1926. On February 24, 1927, we find him writing to the Viceroy :

“ At first sight I am favourably impressed by your suggestion that the Report of the Statutory Commission should be considered by a select committee of the Indian legislature, their report being submitted to Parliament together with that of the Commission. . . . Such a solution may be the way out of a very real difficulty. On the one hand we have to dispose of the destiny of India as it pleases. On the other we have to reckon with the fact that politically minded Indians, not Swarajists only, do not admit this right. They want a Round Table Conference at which they will meet the British Government on equal terms. Anything of the kind *before* the Statutory Commission is impossible in principle, but not necessarily so after it. I do not at the present see, while I reserve a final decision, why the Report of the Commission should not be turned over to an Indian body of the kind which you suggest—or possibly even to a Round Table Conference with Government for the preparation of an agreed scheme for presentation to Parliament.”

On April 28, 1927, he again wrote to Lord Irwin suggesting that there might well be an Indian Round Table Conference or Convention to agree on a constitutional reform scheme, which it might discuss with the Statutory Commission, after the Commission had finished its labours. Whether the Indian Princes might join in such a conference was another possibility to be considered.

The selection of a chairman for the Statutory Commission was anxiously debated in Lord Birkenhead's private correspondence with the Viceroy. By July they had agreed with the Prime Minister that Sir John Simon, if he would undertake the laborious task, was by far the ablest man available. Mr. Ramsay MacDonald readily helped the Secretary of State in the choice of the two Labour representatives, and on July 21 Lord Birkenhead could assure the Viceroy that the Cabinet had ratified his selection. The seven Commissioners were to be Sir John Simon, Viscount Burnham, Lord Strathcona and Mount Royal,

Mr. Cadogan, Mr. Walsh, Colonel Lane-Fox, and Major Attlee. On November 24, 1927, the Secretary of State invited the House of Lords to approve of the submission of the seven names to the King. He admitted that the Labour Party disliked a Parliamentary Commission, including no Indians, but "Parliament could act and would not repudiate its own duties and responsibilities. If anyone seriously supposed, either here or in India, that we were going mechanically to accept a Constitution without our own primary and ultimate responsibility for judging upon it, they had no contact with the realities of the actual situation." He regarded the Commission as "an exceptionally intelligent jury going to India without any preconceived prejudice, and then presenting the honest result to this country of their examination of the Indian problem." He doubted whether more than ten millions out of the three hundred millions of people in India had ever heard of the Commission. He pointed out the virtual impossibility of setting up a Commission that could be said to represent the various religions and races without becoming unwieldy or that would be likely to agree. The Commission would keep in touch with a Committee to be set up by the Indian Legislature; its Report, when presented, would be considered by a Committee of both Houses sitting with a Committee from India. Thus, the Government hoped to carry Indian opinion with them at every stage of the inquiry. Lord Olivier, for the Labour Party, expressed the hope that the Commissioners would consult the Indian Legislative Committee, and that the Indian politicians would abandon their assured intention to boycott the Commission. Lord Reading thought that Lord Olivier's demand for two reports, from the Commission and from the Indian Legislative Committee, was impossible, and that the Government's plan was the best that could be devised. Lord Chelmsford, another ex-Viceroy, joined in the general chorus of approval. Unfortunately the Indian Nationalists were in no mood to accept the Commission in the spirit in which it was offered, and set about organising an agitation against it.

The news of impending boycott quickly penetrated to the India Office. Lord Birkenhead prepared to meet it in a conciliatory manner, and not to expose the Commissioners to more insult than could be avoided. He also insisted that the Com-

missioners should reach no hurried conclusions, but should first make a long and non-committal survey. In a private letter of January 19, 1928, to the Viceroy he wrote :

MY DEAR EDWARD,—

I write to you just before making the journey to Victoria Station to say farewell to the Simon Commission. I have persuaded the Prime Minister, Peel and the Attorney-General to come with me, so that the occasion will be invested with as much importance as we can give it.

I had a long talk with Simon yesterday, and once again covered the ground which seemed useful. I told him, and I am sure that you will agree, that on this first visit, and until the situation clarifies, it would be wisest to give as few people as possible the opportunity of snubbing the Commission. This is a generalisation with which I am sure you will agree, but one cannot, of course, in this office, foresee the development of events with any clearness. But I had it in my mind that as far as possible people should not on this visit be asked to meet those who are likely, in the first place to refuse to do so, and in the second to publish such a refusal with as much offensiveness as they can command. A friendly attitude of unobtrusiveness, willingness to acquire information and make friends, seems to me clearly indicated. I do not, of course, mean that where the response is likely to be friendly preliminary discussions might not take place. We have always relied on the non-boycotting Moslems ; on the depressed community ; on the business interests ; and on many others, to break down the attitude of boycott. You and Simon must be the judges whether or not it is expedient in these directions to try to make a breach in the wall of antagonism, even in the course of the present visit.

I cannot help thinking that Simon's published decision to abandon practice at the Bar will be regarded as a great proof of earnestness in the task he has undertaken, and of his own realisation of its difficulty and importance. He is, of course, a rich man, and I suspect that he was becoming weary of eternal forensic conflicts, and ever since a boy—as you know we were at Wadham together—he has been very honourably, but very strikingly ambitious. Few people have realised it, but my own

view has always been that he was more interested in politics than the Bar, though I have always thought that on great decisions he has generally taken the wrong line. This does not, of course, in any way reflect upon his extraordinary suitability for this particular task, which, though it raises immense political problems, is also beset with a number of others with which his clear, penetrating mind is eminently qualified to deal.

I gave him another word of advice with which I believe you will equally agree. It was that he and his colleagues should, as far as possible, steel themselves against reaching any conclusion on their first visit. I am sure that the attitude of their minds should be receptive, analytic, and non-committal.

The boycott agitation continued, however, and in February we find Lord Birkenhead writing to the Viceroy in terms of disappointment at the reception. The Commission had been received in Bombay by a noisy mob shouting: "Go back, Simon!" Referring to the Commission, he wrote:

"It is indeed a generous bid, calculated, I should have thought, to appeal to all there is of political sagacity in India. It is therefore rather discouraging, but I don't know that it is surprising, to read almost as a pendant to Simon's letter a statement by prominent persons in three of the Indian political parties that they are not in the least moved from their decision to have nothing to do with the Commission. These people seem determined to leap before they look. . . .

"I should advise Simon to see at all stages important people who are *not* boycotting the Commission, particularly Moslems and the depressed classes. I should widely advertise all his interviews with representative Moslems. The whole policy now is obvious. It is to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position, thereby securing a solid Moslem support, and leaving Jinnah high and dry."

In March 1928 Lord Birkenhead was offered, and declined, the Woolsack. He wrote to the Viceroy on this subject, giving his reasons for the rejection:

"It is a very serious decision to have taken, for it puts me definitely outside the law for the rest of my life. As a matter of fact, I was rather bored with it. The ceremonial side of it depressed me, and the rôle of a *revenant* is never very interesting. Furthermore, I did feel that having appointed this Commission I was likely to have more

influence with the members than anybody else, and in the second place I am sure at the moment that I have more influence with Ramsay MacDonald than any new Minister could have. In all these circumstances I have no doubt that it was my duty to remain at the India Office for the next eighteen months. . . .”

Meanwhile the India Office was responsible for the entertainment of King Amanullah of Afghanistan, who was at the time visiting this country. Lord Birkenhead's intense love of Wadham College led him to arrange a great luncheon party for the King in the Wadham Hall. Lord Birkenhead wrote of this gathering :

“The Afghans' visit to Oxford last Friday was a great success, I think. It was not a particularly good day ; there was a drizzle in the morning, which luckily stopped before the party arrived by road from London ; but despite this, and the fact that term was over, and Oxford empty, so far as concerns the University, there were quite large crowds round All Souls and the Schools and the Sheldonian, and between them and Wadham. The King was, I am sure, greatly pleased with the grant of a degree, and with the ceremony. I gather that he fell in love with his doctor's cap and gown, and was only persuaded most reluctantly not to travel back to town in their splendour. The Vice-Chancellor had arranged for a Persian version of the diploma and of his own graceful little introductory speech—he introduced them as ‘Sol alter et altera luna’ from the East ; and this forethought and evidence of erudition were much appreciated.

“The luncheon that I gave at Wadham went off quite happily. I was between the King, beyond whom Humphreys sat, and the Queen, on whose other side were my wife and Lady Humphreys. This arrangement made conversation with Her Majesty a little difficult, but I managed to carry on fairly well with the King by talking across him, though there were considerable gaps in our conversation.

“In case you have not seen it in the Press, I enclose a copy of the speech I delivered ; the King made a short, and not very colourful reply in which he expressed his gratitude and his appreciation of the value of a visit to so renowned a centre of learning. . . .”

A cinematograph film was taken of the visitors. Lord Birkenhead commented in a later letter to the Viceroy :

“I have been told that the film of the Afghan Royal tour has been shown recently privately. I have not had an opportunity of seeing it myself yet, but some of the members of my staff have. Their impression was distinctly favourable. It covers the tour adequately, dealing

particularly with the military displays, the visit to Portsmouth and the voyage in a submarine, visits to industrial centres, the Atlantic fleet and the Docks—the last being, I understand, a very good picture. I do not think that any record is included of the visit to Oxford, but on this occasion weather conditions were bad, and opportunity for the camera men limited. I am informed that there is nothing in the film to which exception would be likely to be taken by an Afghan audience, except possibly that some close-ups of the Queen are very close-up indeed, and as she was, of course, unveiled, possibly these, and in particular one in which I gather the camera caught her scratching her nose, might be worth the attention of a censor. . . .”

In April, Lord Birkenhead was awaiting the return of Sir John Simon after his two months' survey. It was in the Provinces that Simon hoped to find the solution to the problem, and he plainly regarded the Central Legislature as a debating society. The provinces, meanwhile, showed a greater degree of political sagacity by supporting the Commission than the Assembly was capable of, where, in Lord Birkenhead's words :

“The leaders were still playing with vain ideas of equality of status and talk about hostility between England and political India. I do not”, he added, “in the least underestimate the influence exercised by the Assembly leaders, partly by virtue of their position as members of an all-India body, partly by their very considerable astuteness as demagogues. But if Simon can definitely win the more solid weight of the provincial leaders to his side, he may teach the Jinnahs, Jayakars, and Lajpat Rais, that demagogic oratory and lip-service to Nationalism is not the basis on which Home Rule can be based.”

In April 1928 Sir John Simon returned from India, after making an interim survey. Lord Birkenhead invited him to prepare a memorandum and expound it before the Cabinet. He had returned from India with a full realisation of the immense difficulties of the task. Lord Birkenhead wrote to Lord Irwin :

“I may record the impression that, while I think he is still honestly and creditably ambitious of securing a solution which would be a credit to India and the Empire, he is in his heart oppressed without being overwhelmed by the difficulties of the task, and I formed an impression, too, that he has conceived a deep resentment at the antics and demeanour of the Swarajists, and an absolute contempt for their political capacities. He seems to be in good health and spirits. The talk I had with him confirmed the view I have always held that he has



placed us under a deep debt of gratitude, whether he succeeds or whether he fails in undertaking a task which probably no one in the Empire is more competent to discharge. . . . He played the best game of golf with me on Sunday that I have ever seen him play, and in fact himself said that it was the best game he had ever played in his life. He is as conscientious and laborious in his golf as in everything else, and if he loses a ball, unless you are prepared, which one is not, to insist upon the strict rule, you may sit down, after such perfunctory pretence as one offers of searching for one's opponent's ball, and count upon a steady half-hour for reflection."

On May 3, 1928, we find Lord Birkenhead writing to the Viceroy in terms of encouragement. He refers to the "encircling gloom" which had begun to gather round the Government of India and observed:

"It is a very dangerous frame of mind and leads straight to that defeatist attitude which caused the Government of India in the early days of the reforms to throw the reins on the horse's neck, to an extent which frightened even Edwin Montagu. . . . The real truth is that if you live your life in an atmosphere in which everyone abuses you and everyone criticises you, it is difficult to retain a cool perspective. Remember, all of you in the heat of India, that there is a cool and corrective oxygen in this little island. We are solidly behind you: when India confuses you and sometimes angers you, think, my dear Edward, as I know you do, of England."

In the following letter Lord Birkenhead definitely lays down his belief that it was right and legitimate to treat the section of Indian opinion which was working for complete severance of India from Great Britain, as a hostile party:

"I have been reading in the North-West Frontier Province Report for the first half of April, of the visit of Motilal Nehru and Srinivasa Iyengar, and notice that during the visit they were the guests of Government. Both of these politicians, I understand, publicly advocate complete separation from Great Britain as India's ultimate goal. To receive advocates of this policy as guests of Government cannot fail to give it a sort of recognition as a legitimate policy to pursue. This, in my opinion, it is not. You will remember that in dealing with the question of the Indianisation of the Indian Army, His Majesty's Government were averse from using the phrase 'Dominion Status' to describe even the ultimate and remote goal of Indian political development, because it has been laid down that Dominion Status means 'the right to decide their own destinies', and this right we were not pre-

pared to accord to India at present, or in any way to prejudice the question whether it should ever be accorded. I think it is fair to infer from this that separatism should be regarded as a hostile movement, and if that is so, its representatives ought not to be treated in the same way as the representatives of other political movements, which, though they may be unreasonable or ill-timed, are not illegitimate. It is a constant complaint of our friends in India that they are rendered impotent by the encouragement that is given to our and their enemies."

In another letter, of July 1928, from Lord Birkenhead to the Viceroy we see a curious and unconscious anticipation of the tendencies which the Viceroy himself was later to adopt. Lord Birkenhead is speaking again of the volatile and difficult character of Indian politicians, and of the mistake of treating them with too much consideration and respect, and he had already begun to trace the beginnings of that process of confusion and mistrust, which reached a high point of intensity after his retirement from office in the October following.

"I fully realise the force of all you say. It does not do to take these people too seriously; indeed I find it increasingly difficult to take any Indian politicians very seriously. But granted that you and I and their fellow politicians know that they are talking with their tongues in their cheeks, what about the rest of the world; the failed B.A.s who edit the newspapers and the thousands of politically-minded students whom the Communists are trying to capture—do they know it? And is not all this loose talk, though it may have no serious thought or even intention behind it, all the time raising the political temperature, and (worse still) blurring the distinction between right and wrong; accustoming the minds of the simple folks to language and ideas, which if they became serious would be highly dangerous, and so heaping up the gunpowder which any spark may kindle?"

"And though the loyal politicians know that these people are not taken seriously by us, do they like it when they see the Governor at his garden-party giving a great deal more attention to the extremist than to the moderate, and when he is on tour, passing by the loyal but silent landed-proprietor (who has his grievances, but cannot get them heard) and spending hours with the vocal agitator? . . . There is another aspect of the question which I think will appeal to you. You say with great truth that 'to the Indian more than to most human beings there is apt to be a very wide gulf between words and thought'. But are we to leave it at that? How are such people ever to govern themselves or even advance to self-government unless they learn to associate closely, not only words and thought, but also action? Is it not for us

to teach them, or try to teach them, the difference between appearance and reality, by taking them literally for a time, and treating them as what they publicly profess to be, and not as what we rightly or wrongly believe that in their hearts they are? It seems to me that a consistent course of such treatment might have a very sobering and educative effect. It might no doubt, as you say, drive a few over the brink into serious hostility. But I would be quite logical, and deal with them as the law permits. Such a purging of the body politic might be very wholesome and might stimulate the moderate and loyal elements to healthy thought and action. . . .”

In September Lord Birkenhead recorded another conversation with Sir John Simon. In this private letter he frankly reveals his own opinion on the matter. This is particularly interesting as it is most consistent with the articles written by him after his retirement.

*18th September, 1928.*

MY DEAR EDWARD,—

There is not a great deal to write about this week. I had a long talk with Simon on Sunday, both before and after a round of golf which we played together. I need not describe our conversation or its results because they have by now formed the subject of telegraphic correspondence between Simon and yourself, or you and me. He seemed to me in very high spirits and very good health.

One thing struck me without surprising me. With all his extraordinary ingenuity, cleverness and industry, I believe that he has as little idea of the constitutional solution as he had on the day when I first asked him to undertake the duties of Chairman. Indeed, he almost said so in terms. His opinion of the Swarajists is, I think, at least as unfavourable as yours and mine, and his day-to-day association with his native colleagues is unlikely, I should imagine, to endear them in any marked degree. I cannot imagine any more terrible fate in the world in the present situation in India than to try to hack out a new constitution with such talkative and incompetent colleagues. But perhaps your nomination may obtain better and more reticent men than I dare hope for.

The more I think of Simon's task the more I marvel at his courage and public spirit in undertaking it.

The matter, of course, would not present the same diffi-

culties to one who holds my own opinions. Those, as you know, are that the Montagu Constitution was a mistake, ill-conceived, and potentially extremely mischievous. I should, therefore, if I was dealing with the situation as a Mussolini might, correct the gravest and more obvious defects; give them nothing more; and resolutely face the chatter and abuse, for you get just as much chatter and abuse whatever you do.

I have not in any way indicated my own impression, and perhaps prejudices, to Simon, for I did not think it fair to him to hold any language which might look as if I wished to influence him. I have, therefore, never discussed the merits of the matter with him at all.

I am sending the enclosed observations under separate cover, not because they are particularly important or novel, but because they are expressed with some informality and perhaps too much frankness to go upon an official file.

Yours as always,  
F. E.

A month later Lord Birkenhead resigned his office and ceased to be responsible for our Indian policy. But he continued to watch the progress of events in India with close attention, and freely expressed his amazement that the Viceroy should, in November 1929, have declared that the natural issue of India's constitutional progress must be "Dominion Status", thus creating the impression in India and to a large extent at home, that the Simon Commission's cautious and statesman-like Report was to be put aside before it was published to the world. In two articles written in the winter of 1929 and the spring of 1930, and reprinted in his *Last Essays*, Lord Birkenhead said:

"It was indeed a misfortune of almost inconceivable dimensions that the Viceroy should have persuaded the Government, or that the Government should have persuaded the Viceroy to acquiesce in this most unconvincing and dangerous statement.

"No one, of course, ought to have been allowed to say a word until the Simon Commission had reported. Every word that was said authoritatively before the Report of the Simon Commission was said, intentionally or not, in treachery to the authority of the Commission. Its members had the authority to decide whether or no events in India in the last few years have moved them for or against an advance.

“England and Parliament were waiting to hear their recommendations, and to treat them as of the highest authority. Until they had reported nobody, not the Government itself, was entitled to say a word. They were ignorantly and sentimentally short-circuited. The result could easily have been foreseen by anyone who had studied the mentality of the East.

“Nobody knew whether the Simon Commission was prepared to recommend Dominion Status. But everyone who believed reasonably in their sanity knew that that could not be. The minute ‘Dominion Status’ was used by the Viceroy, his Indian negotiators put the matter a step higher. They asked at once whether he would assign a date to the establishment of Dominion Status. He naturally replied that he could not. They therefore abandoned ‘Dominion Status’ altogether and concentrated on complete independence; we are to-day confronted by the situation that the independence of India in relation to the British Government and all that it involves, is the claim of the politically articulate elements in India.”

He went on to show how ridiculous such a claim was, coming from such a source.

In his second article, six months later, Lord Birkenhead could thus comment on another speech by the Viceroy:

“I regret that I must make it plain that a study of the actual words of the statement strongly confirms the views to which I gave expression: the whole speech is so ambiguous that it is impossible to select from it one clear and unambiguous proposal. But the Viceroy does make use of an expression which is the complete justification of the protest that some of us found it necessary to make six months ago. He says: ‘It seems to me utter tragedy that the hand of friendship extended by Britain last November has not been grasped in the same spirit by those who could speak for India. I hope, however, that it may not be too late for wiser council to prevail.’ It is plainly admitted in the passage just set forth that the policy then adopted by the Viceroy has completely failed. . . . Indeed this part of the case deserves a short summary of its own: the Viceroy formulates a statement certain to deceive, and certain to disparage the authority of the Simon Commission. Against almost every conceivable warning he persists in this course. The result is that after a few months almost all those recommended to us as holding authoritative views have since been placed in jail by him who vouched for them, on the ground of seditious practices against the country which Lord Irwin represents in India.

“Most responsible persons, if confronted with a falsification so complete of the assurances which they had given, and by disasters so grave

as their direct consequences, would, it seems to me, have found it necessary to re-examine the whole situation with a view to discovering whether it was not perhaps the case that they themselves and their advisers in India had been guilty of these ghastly errors, rather than those whose advice they so deeply resented at the time."

Lord Birkenhead felt most strongly that the Viceroy, both in his declaration and his speech, was encroaching upon a field in which he had become an intruder; that after the production of the Simon Report, his interference in the matter, except when he was particularly consulted, should have come to an end, and that nothing which he might say in India possessed any constitutional significance. He also dissented from the appointment of the Round Table Conference:

"I am sorry", he said, "to set myself against the authority of the Commissioners on this point, though I did so at the time. Very likely they were right, and I was wrong. But I none the less was clearly of opinion that the moment we tampered with the machinery so clearly provided and so generally understood, we were involving ourselves in a series of doubts and difficulties. . . . And apparently matters are to be still further clarified by the enlargement of the Commission with an Indian secretariat, and with a relationship wholly undefined, in relation alike to the Simon Commission, and the Simon Commission Round Table. . . ."

"I see no reason", he went on, "why from a frank discussion on all sides a scheme might not emerge for submission to Parliament which would confound the pessimism of those who say it is impossible for Great Britain and India, or for various interests in India, to reach agreement. It is interesting to know that Lord Irwin and his advisers hold these views, for it is quite certain that no other instructed person does. And how disastrously *sorry* Lord Irwin has already been is already admitted by himself."

He observed that he was unable to understand the purpose of the Viceroy, but that as far as he was able to do so it appeared that the new Commissioners were to be encouraged in their negotiations by the promise that the findings of the Simon Commission need not prejudice their own conclusions: that it was also plainly suggested that such a Commission might adopt the suggestion "Dominion Status".

He argued that, even as late as this period, Indian politicians could not be too frequently or too plainly told that there was

no prospect of any Government in our lifetime giving India Dominion Status, and that any attempts at illegal and violent coercion would encounter the most serious reprisals from the Government of India. He believed that unless this fact was plainly set forth, that no breach of our faith could logically be pleaded in India, we should be accused of creating this futile machinery of reform, for the object of deceiving those with whom we were negotiating.

And it is fair at this point to say that every prediction he made, and every warning he issued of the dangers which would spring from the Viceroy's speech were precisely fulfilled, and that the generous hopes of Lord Irwin met with cruel disillusionment. How right Lord Birkenhead was in every forecast, and how disastrously wrong were the Socialist Government and the Viceroy, can be read in every phase of the subsequent developments that he was not to live to see.

A high official in India, on hearing of Lord Birkenhead's resignation, wrote :

“ I should like to say how really sorry I am to think that you should be going at the present juncture. You know, of course, how the Swarajists out here have been constantly attacking you. I always feel, however, that the attacks on you have been made because you knew your own mind and have shown your determination to see things through, irrespective of Swarajist clamour—that is exactly what we want.”

The spirit in which Lord Birkenhead administered his office was concisely expressed in those few words. Committed to a policy which he mistrusted, he was posted on that unquiet territory between coercion and liberalism. For four years he had carefully preserved the balance. Never in public speech had he ever suggested that the Report of the Commission would recommend extensions of self-government. He had preserved intact the position he wanted. The moment he left office and his administrative grasp was relaxed, the *débâcle* began. It remains for the historian of the future either to acclaim the White Paper as an outstanding example of brave and enlightened statesmanship or to condemn it as a gross betrayal of our imperial responsibility.



AT MADEIRA, 1926  
LORD TURNFAUN AND LORD BIRKENHEAD





## XVII

### *FIGHTING BOLSHEVISM (1924-28)*

**A** PART from the Indian business which claimed much of his time and thought, Lord Birkenhead took a very active part in home politics while in the Baldwin Ministry. He was generally regarded as the fighting member of a Government that tended to be somewhat timid and hesitant in grasping nettles, whether domestic or foreign. Though in no sense a "Die-hard" Conservative, since he had been bred in the modern Conservatism of Lancashire where Disraeli is still honoured, he believed in dealing firmly with revolutionary agitation that threatened the foundations of our democratic system. Thus it fell to him to take a lead in condemning the Syndicalists who had gained control of the coal miners' unions, and their allies and paymasters in Moscow. The disastrous coal dispute that led to and long outlasted the General Strike of 1926, and the prolonged quarrel with the Soviet Government that ended, after repeated Muscovite breaches of the trade agreement, in the severance of diplomatic relations, were the main questions with which Lord Birkenhead was concerned in these anxious years. Here there will be no attempt to write the political history of England during his term of office, but we may indicate the nature of Lord Birkenhead's interventions in home affairs and illustrate his views on politics from his private correspondence with the successive Viceroy, Lord Reading and Lord Irwin (now Lord Halifax), to whom he wrote regularly and frankly.

It was generally felt by moderate men that the Constitution, menaced by subversive forces, should be strengthened by the new Conservative Government. Lord Birkenhead had long felt and repeatedly stressed the need for a reformed Upper Chamber. He gave the House of Lords his views in the debate of April 2, 1925, on a motion made by the Duke of Sutherland.

He thought that the Socialist Ministry of the future, which was the only practicable alternative to a Conservative Ministry, must have representation in the Upper House. The Socialist Prime Minister "would not find a Lord Chelmsford growing on every bush, and as for Lord Haldane, they would not easily find his like again". Thus some reconstruction was desirable, though the Cabinet had yet to appoint a Committee to consider the problem. The principal weakness of the House, he felt, lay in its numbers. The work was really done by no more than two hundred peers, but seven hundred peers had the right to attend; Mr. Asquith and Mr. Lloyd George had advised many new creations. He himself would reduce the number to three hundred, including about one hundred and twenty who had held high office in the State. He would empower the Prime Minister to nominate a number of Lords of Parliament, who would not be hereditary. He doubted whether it was wise to alter the Parliament Act, much as he disliked it. But he would have a small Committee of both Houses, presided over by the Speaker, to decide in a disputed case whether a Bill was a Money Bill and therefore exempt from modification at the hands of the Lords. Furthermore, he felt that Ministers should be entitled to speak in both Houses, and that, in cases where the two Houses failed to agree, they might settle their differences in a joint session. The extreme moderation of his views is noteworthy; he was always a practical politician.

But constitutional reforms attracted little attention at a time when industrial unrest was reaching danger-point, and when the revolt against burdensome war taxation had compelled the Government to set up an Economy Committee to propose the reductions of expenditure which Ministers seemed unable and unwilling to contemplate. An immediate coal strike was staved off by the setting up of a Coal Commission and by the grant of a large subsidy to meet the difference between the wages that the men demanded and the wages that the owners could afford to pay. Lord Birkenhead's comments on the situation are pertinent.

*October 8, 1925 (to Lord Reading).*

"The unemployment figures do not diminish and continue to be disquieting. . . . For the moment, but at a price, we have a truce in

the mining industry ; but there is considerable risk of fresh trouble in the railway world in November. I am myself of opinion (though many competent to judge do not agree) that we shall have no peace until the matter has been fought out to a victory. In my judgment we shall have to set our teeth just as we should have done if six months more war had been necessary, and carry the matter once for all to a conclusion which will involve a complete reconsideration of the exceptional legal status conceded to Trades Unions, and which they seem to me, under the influence of extremist elements, to have so grossly abused. I hope that I am wrong, and that we may get into smoother waters by a safer voyage. But I think that I am right."

*October 22, 1925 (to Lord Reading).*

"The new Economy Committee has begun its melancholy sittings. One startling proposal follows upon another, each more disagreeable than the last. Yet to say that a proposal is disagreeable does not conclude the matter. Reductions there must be, so that the matter resolves itself into selecting such reductions as may give us the maximum return, while producing the minimum of public resentment. Everybody praises economy 'in abstracto'. This is the beatitude. Everyone snarls like an angry dog if the economy relates to his particular department."

He had one happy interlude at this time.

*November 5, 1925 (to Lord Reading).*

"I have just returned from Scotland where I have been giving Addresses and making political speeches. Two nights of midnight journeys, and the exhaustion produced by five speeches, have not rendered my intelligence more acute or improved my quality as a correspondent. I was asked to give an Address on Robert Louis Stevenson to the Edinburgh Philosophical Society. I expected to find two or three hundred people there—in fact, an ordinary learned society. When I reached Edinburgh I discovered that the Address was to be given in the Usher Hall, which holds three thousand, and was absolutely crowded ; nor was the ordeal of speaking for an hour on a great Scots literary figure diminished by the circumstance that practically every man of distinction in Edinburgh was present. Arthur Balfour motored twenty miles to attend ; all the Judges and all the professors were on the platform. On the whole I got through moderately well, I think, though had I realised that the affair was on so large a scale, I think that somehow or other I should have found time to write the whole thing out, instead of depending upon notes, most of which—

to be perfectly frank—were prepared on the afternoon of the Address without any literature, and in reliance upon my knowledge which, however, for an Englishman is considerable, of Stevenson's works.

"I spent that night with Arthur Balfour at Whittingehame. It is indeed a most lovely place. The park and gardens have been made over a series of small ravines with many streams bubbling between them. We went a long walk in the morning and it was altogether charming; indeed, a sufficient justification in itself for two tedious train journeys. The sun shone brilliantly, the autumn tints of the falling leaves were indescribably beautiful, and Balfour, more agreeably and frankly reminiscent than even I, who have been much in his confidence in the last eight years, have ever known him."

Ireland again claimed his attention. Largely by his personal influence, he was able to arrange an awkward and unforeseen dispute.

*November 26, 1925 (to Lord Reading).*

"I have been detained all day over the recrudescence of the Irish business, which reminded one very closely of old times. The original Irish signatories of the Treaty forced upon us, as an indispensable condition of their signatures, the Boundary Commission. A year ago, rejecting our advice, they forced the appointment of the Commission. They have now got the award which every competent lawyer knew was the only one which a sane Commission could make; and they are not happy even now. We have seen President Cosgrave and Sir James Craig this morning: and the two are to meet in the presence of the Prime Minister this afternoon. I am not sanguine of the result. It seems to me that the differences which sunder Moslems from Hindus are not as bitter or as unbridgeable as those which divide Orangemen from the rest of Ireland."

*December 3, 1925 (to Lord Reading).*

"I have spent seven hours a day for the last two days trying to re-settle the Irish difficulty which has followed upon the decision of the Boundary Commission. You know I always contended and advised my colleagues that Article 12 of the Treaty meant, and could only mean, a rectification of frontier, and not a re-allocation of great areas or towns. Sumner and Cave took, or proposed to take, the opposite view and so advised the House of Lords. It is satisfactory to me that the Commission's finding has so completely confirmed my own view and discharged me of the responsibility which individually I incurred in relation to my former colleagues. But the finding involved other

grave consequences. It threatened to submerge the pro-Treaty Free State Ministers, with the result that the Government of the country must have passed into the hands of Republican, perhaps even revolutionary, elements. If the Dail was to be persuaded to acquiesce in the Boundary, it was necessary to give the Ministers something which they could represent as an inducement and even as a victory. In these circumstances, after great argument and disputation, in the Cabinet and out of it, we have practically agreed to waive Article 5, in other words to relieve Ireland from her share of war indebtedness. She has, however, undertaken a liability amounting roughly to some £8,000,000, and hitherto discharged by us, to compensate the Loyalists who suffered in the Civil War. The discussions were conducted by Churchill, Salisbury, and myself, on behalf of the Government, with three Irish Ministers. Incidentally they have resulted in the establishment of a greater degree of cordiality between Southern and Northern Ireland than has ever existed. They both developed a friendly and competitive enthusiasm in the task of plundering us."

*December 10, 1925 (to Lord Reading).*

"I am sure you will rejoice at the complete triumph of the Irish settlement. We took, as you well know, the most amazing risks when that settlement was made, particularly in reference to Article 12, which dealt with the Boundaries. It seemed to me, over and over again, since the Treaty was signed, that it might one day break down upon this Article. We have at last, I believe, won through and vindicated for all time the statesmanship of the settlement which, at a bitter moment, we attained. The present Treaty, as you will have seen, is accepted by all the three parties concerned; and it is universally and necessarily recognised that this settlement would have been impossible if it had not been for the earlier Treaty. The first Treaty would never have been signed but for the clear personal view which I formed that it ought to be. I have always considered that my individual personal responsibility was greater than that of any Unionist signatory. You may therefore easily imagine how pleased I am that a judgment, the wisdom of which I have frequently since doubted, has been vindicated in the result."

Graver matters at home caused this Irish trouble to be forgotten. The Coal Commission was inconclusive and the Coal Subsidy, the Government felt, must be discontinued. Thereupon the Trade Union leaders determined to bring the whole force of their movement to bear, in order to compel the Government to yield to the coal miners' demands. It was a definite

challenge to Parliamentary Government and to the liberties of the people. The T.U.C. must rule or be crushed. The Ministry had long foreseen the danger and had made preparations to meet it.

The General Strike of 1926 was the direct outcome of the Liberal surrender of 1906. Before that date the functions of the Trade Unions had been healthy and beneficial. They were infected by no foreign doctrines, but generally concerned with obtaining the best terms in the market for working men. As we have seen, the members of the 1906 Parliament were pledged to a reversal of the Taff Vale judgment. We have seen how the moderate Bill recommended by the Cabinet was drastically amended, though Ministers were fully alive to the terrible dangers involved in the provisions which afterwards became law as the Trades Disputes Act. There can be no clearer reflection on the short-sighted folly of the Parliament of 1906 than that its members had no conception of the momentous quarrel to which their decision must ultimately give rise. The moderate Bill was abandoned and the Labour Bill substituted for it. An even greater blame attaches to the Liberal leaders. Influential members of the party, such as the late Lords Oxford and Haldane, were strongly opposed to the provisions which, through cowardice, they allowed to become law. The legislation for which they made themselves responsible provided, as we have seen, that no action should lie against Trade Union funds, even if the Union had ordered illegal acts involving heavy loss. In other words, a body was, for the first time, placed by the Liberal Government above the Law. A trade union could now commit a tortious act which involved hundreds of thousands of pounds of loss without any action for damages lying against them. Had this Bill not become law the General Strike could not have taken place.

The General Strike of 1926 sprang from a crisis in the coal industry, which, if it had been precipitated some months earlier, would have undoubtedly produced in 1925 a strike in that industry, leading to a General Strike. It was to avoid this crisis that the Coal Commission was set up by Mr. Baldwin's Government, the Report of which was accepted with some misgivings by the Government as the basis for legislation, provided the owners and the workers did the same. Both parties

approached the question from an individualistic standpoint; both without sincerity and without any honest determination to arrange an accommodation; both with the object of obtaining a further subsidy from the nation. The owners, looking for the restoration of an eight hours day, suggested unacceptable maximum wages for a seven hours day. On the men's side the issue was clouded by the presence of incendiary leaders, the most potent of whom was the secretary of the Miners' Federation, Mr. A. J. Cook.

At the outset, then, the Government entered the controversy unwillingly and in the rôle of mediators, the reason for their interference being that the parties were incapable of settling their differences themselves. At an acute moment before the General Strike the miners put their case in the hands of the Trade Union Council. The Council opened negotiations with the Government. When the negotiations had begun, it was made clear that the Council had no authority to arrive at a conclusion on behalf of the men, but only to discuss the situation with the Government, and the men's representatives adhered to the claim that they were entitled to higher wages than the coal industry could economically pay. The Government therefore proposed to both parties that they should accept the Report of the Commission. The owners made a tentative advance, the men none. There was never the slightest hope of arranging a compromise, as the Trade Union representatives had no authority and their clients not the slightest intention to give way either upon wages or hours.

Thus the General Strike differed in its main aspects from other movements. It was not a strike directed against the coal owners for higher wages. It was a revolutionary movement directed against the Government because the Government refused any further subsidy to the industry. It was, in the words of Lord Birkenhead:

“An attempt by a body of men who had no representative capacity to dictate to Parliament. It was not even pretended that intervention was based on any democratic communication with the very limited Trade Union clientele in the country. About twenty gentlemen meeting in London, who could easily, if things had gone well, have been persuaded to become members of the first English Soviet, gave orders in breach of the law. Their purpose was to choke the arteries



of the nation, and by doing so to bring the constitutional government of this country to its knees. If it had not been for the infamous Liberal legislation, to which reference has already been made, the instigators of this movement would have been liable to millions of pounds in damages. Had it not been for the folly and weakness of the Liberal Party in 1906 the funds of the Unions would have been responsible, and the realisation that they were so responsible would have been a corrective of this flagrant act of illegality. In fact, an attempt was made to call out the great industries of the country in order to paralyse and disarm society and place it at the mercy of the Trade Union Council. The nominal total of Trade Unionists is only five million. It would indeed be a sanguine estimate that half this number would have gone into the Strike if they had been consulted. But they were not consulted. The little junto of cowardly and embarrassed men who met at Eccleston Square to make this decision, and who were to meet ten days later in abject humiliation to withdraw it, consulted no one. They decided upon this prodigious step, and it was immediately taken. They could do it with immunity because Sir Henry Campbell Bannerman, Lord Oxford and Sir John Simon had protected their funds from any breach of contract."

It is interesting, in connection with the General Strike, to note that Lord Birkenhead, as in the Irish controversy of 1921, played the part of a peacemaker, though here, unfortunately, without success. On May 1, 1926, the Trade Union Executives had met and resolved, almost unanimously, to call a General Strike for the night of Monday, May 3, ostensibly on behalf of the miners who refused to come to terms with the coalowners. Mr. Baldwin thereupon proclaimed that a state of Emergency had arisen, and put in force the Emergency Act authorising the Government to control food supplies and all forms of transport. But he invited the Trade Union Council to meet him and talked with them for many hours in the vain hope of persuading them of the folly of their strike menace. Next day, Sunday, May 2, the Prime Minister made yet another effort to keep the peace. Summoning the negotiating committee of the Trade Union Council, he laid before them a formula devised by Lord Birkenhead as a possible basis for negotiations. It ran :

"We, the Trade Union Council, would urge the miners to authorise us to enter upon discussion with the understanding that they and we accept the Report (of the Sankey Commission) as a basis of settlement,

and we approach it with the knowledge that it may involve some reduction in wages."

The Trade Union leaders received the formula, as explained by Lord Birkenhead, with favour, and went away to consult the miners' leaders. According to Lord Snowden, in his recent *Autobiography*, Mr. J. H. Thomas, who was at the meeting, thought that they were "within an ace of a final settlement". But after the Trade Union leaders had left Downing Street, the Cabinet learned that instructions for the General Strike had been sent out and that the *Daily Mail* employees had prevented the publication of the paper because they disliked the leading article on the strike threat. The Cabinet then decided that further negotiations were useless, and issued a statement to that effect. Early in the morning of May 3 Lord Snowden suggests that the Trade Union leaders, after consulting the miners' representatives, were prepared to act on Lord Birkenhead's formula. He infers that the majority of the Cabinet revolted against Mr. Baldwin and were resolved to teach the Trade Unions a lesson. But there is no evidence to support these assertions or guesses. For many months after May 2 it was all too clear that the miners' leaders were resolved to go their own desperate way and that they would pay no attention to the advice of the other Trade Union executives. Thus it seems wholly improbable that at the very outset of the long and disastrous coal dispute, which has permanently deprived hundreds of thousands of miners of their livelihood, Mr. A. J. Cook and his colleagues would have accepted Lord Birkenhead's formula. It implied a reduction of wages, which Mr. Cook fought to the very last. Still, Lord Birkenhead, by the admission of one of his most formidable political opponents, had shown the contending forces a way out of their troubles. Lord Snowden accuses both the Government and the Trade Union leaders of "incapacity and folly".

"They never came to grips with the problem. Every conference began with a repetition of the conjunctive attitudes of the two parties, and ended the same way. It was not till Lord Birkenhead came on the scene that the issues were focussed in a definite proposal. No one could read these documents without feeling a great admiration for the acumen of Lord Birkenhead and his capacity for getting to the root of a problem. If his advice had been accepted by the Govern-

ment, as it was by the Trade Union Council, no strike would have taken place.”

In the last sentence, as we have indicated, Lord Snowden goes beyond his book in order to put Mr. Baldwin's Cabinet in the wrong. There is, we repeat, no sure foundation for the belief that the Trade Union Council could or would have persuaded their troublesome mining allies to pay any attention to the formula. But the Council might possibly have cancelled its call for a General Strike, though here again there is no evidence for the suggestion, since the extremists were in control. Still, Lord Snowden's testimony to Lord Birkenhead's efforts as a peacemaker on the eve of the General Strike should be fully emphasised. It was in keeping with his actions throughout his political career. But it must be added that, when his efforts for peace had failed, he strove as earnestly as anyone to defeat the revolutionary menace, and kept his colleagues up to the mark.

The struggle was brief and decisive. Regular communications by rail and road were stopped, and industries were shut down. The Government mobilised troops to guard the docks, gas-works and electric plants, and organised motor transport to bring food and milk to the towns. Hundreds of thousands of private persons gladly volunteered to fight the strike. Public opinion declared itself so definitely against the pretensions of the T.U.C. that after ten days they threw up the sponge. Lord Birkenhead expressed the general view when he wrote a few days later to the new Viceroy, Lord Irwin, who had left the Cabinet to go to India :

*May 20, 1926 (to Lord Irwin).*

“The result of the General Strike altogether delights one ; for it shows that this old England of ours retains its spirit unimpaired. The people tolerate up to a point Russian infiltration, Trades Unionist tyranny, Red Flag demonstrations and Socialist Sunday Schools. But while they say little—rather disappointingly little—they think, intuitively rather than by ratiocination, a great deal. And suddenly they make up their mind. The provocation may be a Pope, a Stuart, a Napoleon, a Prussian or a Trades Union, but once the realisation has gone through the whole country, it is irresistible. It has proved so in this case. The newspapers will have told you of the splendid

spirit that animated the whole people. Everyone is asking why this General Strike collapsed so quickly. Fifty contributory explanations are available, but I recall the lines of Edgar Allan Poe :

‘ A wind blew out of the sea,  
Chilling and killing my Annabel Lee,  
My beautiful Annabel Lee.’

A wind blew from the whole of England, chilling and killing the spirits and the pretensions of those who were challenging constitutional Government and Parliamentary institutions. More and more they became conscious how numerous were their enemies, how few and in many cases how unwilling were their friends. The collapse was very sudden. I was one of the few Ministers who received the ultimate Trades Unionists' surrender. It was so humiliating that some instinctive breeding made one unwilling even to look at them. I thought of the Burglers of Calais approaching their interview with Edward III, halted on the neck.

“ The public relief at the crushing of the General Strike is so great that there is a disposition to ignore the formidable fact that a million men are still out of work in the coalfields, and that the very difficult negotiations that remain are not proceeding over smoothly. It would be possible to say without exaggeration of the miners' leaders that they were the stupidest men in England if we had not frequent occasion to meet the owners. Each party admits that it cannot conceivably arrive at a settlement with the others. Unitedly, therefore, they fling at the Government the incredibly difficult task of mastering the details of a complicated and technical matter and proffer the modest request that the Government should supply an adjustment, towards obtaining which neither owners nor men can make the slightest useful suggestion.”

Lord Birkenhead did not over-estimate the stubbornness of the miners. As an active member of the Coal Committee set up by the Cabinet, he was to be occupied daily for the next six months in interminable efforts to bring this obstinate and fatal quarrel to an end. His correspondence reflects his varying moods from week to week, with an occasional excursus on other political events.

*Issue 3, 1926 (to Lord Irwin).*

“ There is not at present any real sign of weakness on either side. But symptoms are manifesting themselves which seem to me certain to introduce some change. For instance, the general and most incon-

venient curtailment of the railway service has prevented the re-employment of thousands of railwaymen who went on strike. These men are not entitled to the dole and their maintenance has already almost depleted the great funds of the Railway Union. The leaders are in a state of extreme perturbation. One actually wrote urging a great increase in the import of foreign coal with the object of improving business on the railways; he said that the men of his union would gladly handle such coal. Bevan, the very able head of that sprawling body, the Transport Union, has found himself in a position of great embarrassment. His people are suffering in the same kind of way and for the same causes as the railwaymen. He is apprehensive that he will have to decide positively (as he will) within the next day or two whether he shall allow the dockers to handle 'blackleg' coal or not.

"It may be that, costly as this dispute is proving and injurious as it is to the trade of the country, it may have been worth while having it if it teaches Labour leaders once for all the lesson which they have always refused to learn, of the mutual interdependence of Labour elements. Such a realisation must, it seems to me, induce a far greater spirit of prudence than has been exhibited in the last twenty years. If a railwayman knows, for instance, that if the collier leaves the pit a swift and unfavourable reaction will result in his own position, he is likely to use his influence in the direction of pacific counsels, and autocratic as the control of all the great trade unions has become, even in this movement the pressure of private and individual influence makes itself felt in the end.

"The most amusing development in our domestic politics is the bitter quarrel between Oxford and the other Liberal leaders, with the exception of Beauchamp, on one side, and Lloyd George on the other. The Liberal party appears at the moment to have no followers at all in the country. Their usual poll, as you will have observed, is about 1,500 in a large constituency; and they almost invariably have to pay a deposit. But nevertheless the ambition seems both keen and general to lead what is left. The odd part about the present situation is that Lloyd George has with him every Liberal paper but one in the country. He has also nearly all the Liberal agents in the constituencies; and he is not lacking in more disinterested support from other Liberal elements. The real truth of course is, if one analyses it, that the Liberal party has always in all its history, from the days of Charles Fox onwards, been intuitively wrong in every moment of grave national crisis. Lloyd George went hopelessly wrong in the strike. He, therefore, to-day, according to the best Liberal tradition, is considered right because in fact he was wrong, while Oxford is considered wrong because in fact he was right."

*June 10, 1926 (to Lord Irwin).*

“No progress whatever has been made in adjusting the coal dispute. The owners asked the miners to meet them unofficially. The men’s leaders refused to give way in the slightest degree either on wages or hours. In fact, the only suggestion they found themselves in a position to make was that a higher price should be charged for coal sold in the English market than that at which it was offered abroad. The position is very bad, and it looks as if it may be necessary—difficult as is the undertaking—for the Government to intervene. What seems to me quite certain is that, however serious the consequences, we ought not in any event to make ourselves responsible, in the hope of a temporary alleviation, for bringing into existence a state of affairs which is in itself uneconomic and is quite certain to provoke a new disruption in a few months. The matter has to be fought out some time, and in my opinion it must be fought out now.

“As I predicted to you last week, Lloyd George succeeded in the election for Parliamentary leader of what is left of the Liberal Party. Paradoxically enough, his success depended entirely upon the votes of five so-called Liberals, all of whom disapproved of his attitude in the strike, and all of whom are believed to be awaiting the earliest opportunity of coming over to the Unionist Party. Apparently they have been treated as pariahs both by Lloyd George and by the Oxford section. But on the whole they were received with less incivility by Lloyd George. The whole situation is comic.”

*June 16, 1926 (to Lord Irwin).*

“The coal strike still drags its weary course. We made proposals yesterday, as you will have seen, which will have the effect of suspending the Eight Hours Bill for a period of years, and we coupled that with certain proposals made on behalf of the owners which undoubtedly went further than anything they had offered before. The reception of these proposals on the part of the Opposition was extremely frigid, but that we expected. The only real hope that I pinned upon them is that they may induce a return to work in those districts where no reduction of wages is involved. If some considerable leakage set in, it would inevitably spread.

“At the same time we are contemplating importing coal upon a very large scale. If we permit the miners to bring to a stoppage the staple interests of the country, we shall be confronted by a situation little less perilous than the general strike. Indeed, after all, we might lose the whole battle if we permitted such a contingency to arise. We are therefore all of us of opinion that, even if it becomes necessary to

import millions and millions of tons of foreign coal, we must nevertheless do so.

“We have spent all the morning discussing our attractive friends, the Bolshevists. I am myself clearly of opinion (1) that we ought to stop their fraudulent subventions of the miners’ quarrel; (2) that we ought to clear them root and branch out of the country. No decision has yet been reached.”

*June 24, 1926 (to Lord Irwin).*

“My own view has clearly developed that the only way of ending the coal strike is to break the Moscow disciple, Cook, who is directing it. I have, therefore, without much sanction from my colleagues, devoted my public speeches to an attempt to discredit him. As long as he leads the movement, there will be no settlement; it therefore seemed to me, upon a sound and well-established tactical principle, that it was worth while to get rid of him. The colliers are extremely obstinate. Cook does not talk Moscow talk to them. He talks about their wages and their hours, and at the same time he does not desire a settlement. You will readily see how difficult our task is—compelled to carry on negotiations with an hysterical idiot who is determined that those negotiations shall fail.”

As a diversion from India and coal, Lord Birkenhead had an opportunity at this time of dealing with the little clique who advocated the claims of the few peeresses to seats in the Upper House. As we have seen, he had in 1917 abandoned his objection to woman suffrage, and in 1918 accepted the Bill permitting women to stand as candidates for the House of Commons. But when a further Bill threw open all professions and posts to women, he was careful as Lord Chancellor to insist that peeresses in their own right must not be entitled to a writ of summons. Lord Astor more than once promoted a Bill to remove this final disqualification, but failed to win over his fellow peers. On June 24, 1926, when Lord Astor for the third time presented his Bill, Lord Birkenhead contended that it was a petty and trivial measure for the benefit of some twenty-five women. “Without disparagement of any of these twenty-five ladies he would say that it was within the knowledge of every one of their lordships that not one of the ladies would be nominated by any competent tribunal to sit in that or any other legislative Assembly.” The admission of women to the Upper House could only take place as part of a general reform

scheme, as to the prospects of which he was a pessimist "because his experience there had fortified him in the conclusion he had formed long ago that that House was very well content with itself as at present constituted". If a reformed Upper House had to be constituted by selection, then its women members would be chosen from the whole country and not from the few who happened to be peeresses. The Bill found many supporters, but was again rejected by a substantial majority.

The coal dispute still dragged on.

*July 8, 1926 (to Lord Irwin).*

"I cannot give any good news about the coal strike. We have played almost our last card by passing the Permissive Bill enabling the men to work eight hours if they choose, and by practically constraining the owners, as a kind of bargaining return, into offering much better terms for an eight-hour day than they have hitherto produced. We can now only wait and trust that there will be such a degree of leakage in the districts as would bring the whole hateful business to a close. Two useful features have, however, recently emerged. In the first place, there is a growing realisation in the minds of the public that Cook is a mere tool of Moscow, and that he does not, in his heart, desire a settlement but a revolution. In the second place (J. H.) Thomas, getting his tit for tat with the Extremists, has made a timely publication of the case of the railwaymen against the Miners' Federation. This very remarkable publication shows that at every stage the Government was right and the representatives of the miners wrong. Nor is the conclusion in any way concealed that there was no stage in this controversy at which an honourable settlement was not, in the opinion of the leaders of railway labour, within the reach of the miners. In the meantime, incalculable loss has been inflicted upon the whole industry: foreign markets, not easily to be recovered, have been lost: and the whole financial year is grievously compromised. It is a tragic business."

*July 15, 1926 (to Lord Irwin).*

"No development in the coal situation has taken place, though I myself believe for the first time that some symptoms of an S.O.S. are discernible. The very severe denunciation of the Cook methods by the T.U.C. have undoubtedly produced a great moral effect. The churches are again—if I may use the expression without offending you—butting in. In spite of this, several indications lead one to be sanguine that, if not before, at least immediately after the August Bank Holiday, the



men will come back, in spite of the Russian neurotic who is their leader. The extraordinary and most reassuring fact that the trade of the nation has adapted itself almost incredibly to this great deprivation. We have 500,000 fewer unemployed than at the corresponding period of the last coal stoppage. I deduct, of course, the unemployed miners in both cases.

“In the second place—and this is almost incredible—our whole trade balance for the month of June is very little less favourable than it was in the corresponding month of last year when there was no strike. We are truly very wonderful people in spite of our wilder elements. We are importing coal upon a very large scale and without interference or the threat of it. If the strike went on for four months longer, I now believe that we should be strong enough to do what I never hitherto believed to be possible, namely, to support our industries by imported coal. I need not say that the financial consequences of such an immense increase in that for which we must ultimately pay are very grave and would, of course, if prolonged, be disastrous. But I myself have come clearly to the conclusion that we must treat this period in the same spirit as if we had to face some months more war. We cannot afford to lose; we cannot lose without sacrificing all that we gained by our victory in the General Strike. We must make an end here and now of this economic unrest and unsettlement which in this country has been the gravest aftermath of the war.”

*July 22, 1926 (to Lord Irwin).*

“There has been a certain drift back to work of the miners, and the importation of foreign coal is proceeding unimpeded upon a very large scale. The drift back does not at present herald a breakdown. We did not, however, expect this until after the August Bank Holiday. If it does not take place then, it will be necessary for us to re-examine the whole situation. But all our plans are made upon the basis that the strike will last far into September. In the meantime the remarkable resiliency of our trade continues. The real truth is that these convulsions in the Trades Union world are eating up the Trades Unions by bankrupting their resources, while the rest of the nation, though suffering great inconvenience, manages to worry along.”

*August 16, 1926 (to Lord Irwin).*

“I am now attempting to enjoy the holiday which the Prime Minister has kindly pressed upon me after my illness in January, but which the pressure of public affairs has not yet enabled me to take. I spent, however, the whole of Cowes week in my small boat with my family and greatly enjoyed it. I did not even come up for the final sitting of

the House of Lords or for the Cabinet meeting on Wednesday ; and, even more disgraceful, I shirked a meeting of the Coal Committee on Friday. I am now at my country house at Charlton, playing golf and tennis and riding every day, and I hope very soon to gain great strength. I was able yesterday to play a round of golf, six sets of tennis, and, in the evening, to canter two hunters three miles each. And after that I slept—and, I think you will agree, deserved to sleep. I slept, indeed, so well that I did not even hear the earthquake which brought every other member of my family out of bed. They described the curious shaking which gave three of the inmates of the household the impression that somebody was under their beds—a contingency which, I pointed out, so multiplied was extremely improbable.”

*August 16, 1926 (to Lord Irwin).*

“I think more than I have ever thought that the coal strike is tottering to its dishonoured conclusion. That wretched neurotic megalomaniac, Cook, is now sending out an S.O.S. We do not propose to give him the slightest assistance. The so-called representatives of the Church probably prolonged the strike for three weeks, and made themselves responsible for the incredible effrontery of proposing a further four months’ subsidy. We have therefore been confronted with the *opéra bouffe* of a consultation of the miners as to whether they will accept terms which no one in the world except a few half-baked ecclesiastics, most of whom call themselves Christian Socialists, intend to offer them ; and even these terms, far exceeding anything within the grasp of the miners, have been rejected. Our faithful friend, Cook, has raised a genie from the bottle which he is now attempting to recapture. In my judgment he will entirely fail in this attempt. The probability at the moment of writing is that a settlement by districts will follow, which will mean the ruin of the Miners’ Federation. Incidentally Cook will, in my expectation, disappear. He can, however, at this moment of his existence, make a considerable claim. He has cost the country 150 million pounds ; has entirely depleted the funds of his own Trade Union ; and has almost ruined the finances of the other great Trade Unions. The cost has indeed been appalling ; but if it has taught the general body of Trade Unions the iron lessons of economic truth, even this gigantic expenditure will not have been thrown away.”

*September 23, 1926 (to Lord Irwin).*

“My anticipations of developments in the coal trade have, as usual, been falsified by the result. I am not altogether happy about the

attitude adopted by the Government in my absence, although obviously we have all to stand together. I think that Cook and Smith are doing so much mischief and are so hopeless that it would have been better to face the economic disadvantages and risks of a fight to a finish, and I think we could have fought and won. Nearly 100,000 men, or ten per cent. of the mining community, are now back at work. If we had not resumed discussion with these dangerous and discredited men, I think that the situation might have been carried to a victorious conclusion. Nor does it seem to me that this talked-of resultant bitterness has any solid foundation. We got no gratitude or affection as a result of our twenty million subsidy. What is required is that men should learn the lesson of the economic value of insane decisions ; and equally that they should realise that the leaders have proved themselves incompetent and dangerous and should be discarded. However, I do not think that the matter is in a very bad train from our point of view."

*September 30, 1926 (to Lord Irwin).*

"There is little that I can tell you about the coal situation. The Government decision, in circumstances of great difficulty, to make an offer of a tribunal was fully explained in the debates on Monday and Tuesday last. The owners, not unnaturally, object to this tribunal because they believe that they, at long last, have beaten the men ; the drift back to work has become more and more pronounced in the last week, and there are strong indications to-day that the resistance even of the most stubborn districts is breaking.

"There is, and there will no doubt be more, criticism in some quarters friendly to the Government at this offer of a tribunal at a time when the Hindenburg line of the miners was obviously breaking ; its justification lies in two facts of primary importance.

"The first is that the shortage and high price of coal for ordinary domestic purposes is beginning to become a serious difficulty, superimposed upon the already enormous losses caused to the trade and finance of the country by the stoppage, and that public discontent and discomfort will undoubtedly grow with the approach of winter ; therefore, while the bulk of the men would very likely go back anyhow, without any further action by the Government within the next month or six weeks, anything which will bring them back earlier owing to the acceptance by their leaders of the terms offered will be of very great value, much greater indeed than would have been the case in the height of the summer.

"The second fact is that a settlement arrived at with some degree of willingness on the part of the men rather than an ending of the strike owing to their sheer inability to continue it, would have im-

portant industrial and political effects. Still, I cannot conceal from you my own view that in all the history of the case the owners were entitled to the victory; and that a great economic and industrial lesson would have been taught if they had been allowed to win it."

*October 7, 1926 (to Lord Irwin).*

"The main development in the Coal situation this week is the rejection by all the Miners' District Associations, except one, of the Government's offer to legislate, in the event of an immediate resumption of work, to establish an appeal tribunal.

"The Delegate Conference meets to-day, but in face of the voting in the districts it is a foregone conclusion that they will find themselves compelled to reject the Government's offer. The Prime Minister had recently reminded the Miners' Federation that the Government's offer will lapse unless it is accepted forthwith, so that the tribunal scheme is now on the point of vanishing from the scene like other attempted solutions. Personally I welcome the death of this particular plan.

"Although the field is now left without any specific scheme for a settlement, the situation continues to improve with a steadily increasing though not yet impressive, drift back to work.

"The figures for tonnage of coal now being raised weekly have improved to such an extent that we have postponed for the moment the contemplated issue of fresh regulations drastically limiting the amount of domestic consumption of light and gas.

"But I fear the postponement can only be short, unless the present rate of increase of output from the pits is markedly accelerated at an early date.

"If, as I anticipate, the public receive the fresh restrictions (should they have to be imposed) in their customary spirit of cheerfulness in adversity, the miners will receive another useful lesson of the hopelessness of their fight."

*October 14, 1926 (to Lord Irwin).*

"Events in the coalfields are moving more slowly than we had hoped for. In Scotland, Yorkshire, South Wales, and Northumberland and Durham the number of men at work is not yet considerable, and, generally speaking, these are confined to certain pits.

"Fortunately the tribunal scheme has now disappeared, and Cook has reverted to his first slogan. He has been making desperate efforts in Nottingham and Derby, but the numbers at work there continue to

increase, though possibly he has succeeded in keeping out some who would otherwise have returned.

"However, it is now only a question of time, and though our previous expectations have not always been realised, I think the tendency to return must soon become widespread.

"Our chief concern at the moment is as regards supplies. There has been a strike in the Elbe ports, and supplies of coal are exceedingly difficult to obtain. We may still be compelled to ration gas and electric light companies and railways, and compel them to reduce their services. Home production has, however, exceeded estimates, and for the moment we have not been forced to come to a decision. Rationing of domestic supplies must, I fear, be continued for some time after a general return to work."

The hard-worked Secretary for India, who was daily attending the Coal Committee and advising on the economic problems that arose out of the fatal strike, was called upon in the autumn of 1926 to play a prominent part in the Imperial Conference. It was of exceptional importance. The Irish Free State was represented for the second time; moreover, the presence of General Hertzog, the South African Premier, was awaited with some anxiety as he had been at pains to gratify his extreme Nationalist supporters by insisting on the Union's right to secede from the Empire if it wished to do so. Fortunately all went well. Lord Birkenhead wrote :

*October 21, 1926 (to Lord Irwin).*

"We are living at the moment in a whirl of business springing from the Imperial Conference. There are lunches, and dinners every night, and innumerable speeches. Hertzog made an observation which you will have read and which caused anxiety in some quarters. I attach no importance to it myself. After all, having regard to his record, he was bound to say something to satisfy his own supporters in South Africa. I thought that he said the very least that could have been expected.

"President Cosgrave made a very good little speech—I thought from our point of view admirable. In fact, there was nothing in it from first to last which was not extremely encouraging. I could not help feeling what complete justification his presence and that of his colleagues afforded for our much criticised Irish policy. Even the *Morning Post* says, in a leading article to-day, 'President Cosgrave is beginning to realise the advantages of belonging to the British Empire'. Unfortunately, relying upon somewhat rash dicta by Lord

Loreburn, and later by Lord Haldane, he is raising the matter of Irish appeals to the Judicial Committee. He wishes that these appeals should cease. I have not yet spoken to the Lord Chancellor about it, but personally, if he insists, I think it will be impossible to refuse. The loss of the Irish appeal in itself is a matter of small importance. But I should regard it as a very great misfortune if South Africa adopted the same course, and I fear that the incident may revive discussion on the subject in Canada."

*October 21, 1926 (to Lord Irwin).*

"The coal strike is indeed dying hard. To-day a quarter of a million men—more than a quarter of the whole—are back. Cook and company are touring the Midlands in a last frenzied effort to bring the men out again. Up to the present they are meeting with little success. There are not enough of them to stop the dam everywhere. They apply a little cement here, but, while they are doing so, an unexpected fissure suddenly appears elsewhere and in comes the water. I hope that I am not too sanguine in believing that we are very near the end. The country has borne up in the most incredible manner, and, while we have lost much, trade has in many of its branches shown an amazing resilience. We ought to be helped by a very good harvest."

*November 4, 1926 (to Lord Irwin).*

"I have been so overwhelmed with work in relation either to the Imperial Conference or to Coal that I have had very little time to give to our affairs this week. It has occurred to me that you might be interested from the Imperial point of view if I attempted to give you a rough valuation of the personalities engaged.

"Mackenzie King, the Liberal Prime Minister of Canada, has responded enormously to the civility, respect and hospitality which he has received in this country. He has never been in any way troublesome, and when Hertzog propounded a formula laying stress on the 'independence' of the self-governing Dominions, King said that he could not possibly go back to Canada with a formula containing this word. In my opinion, it is more satisfactory to us to have a Liberal Government in power in Canada, as long as these are the sentiments of the Prime Minister, than a Conservative. For the presence at an Imperial Conference of a Conservative Prime Minister, giving utterance to ultra-British sentiments, is apt to provoke criticism or disparagement from a Liberal Opposition. It is the same paradoxical conclusion which one reached in 1914 that it was far better that the Liberal Party should be in power in this country. Had the Conservatives taken the decision, such is the incurable rottenness of Liberal

opinion in a moment of national crisis that we should never have carried a united nation into the war.

“General Hertzog is much milder than I expected. In fact, I do not think that he means any harm at all. He is very tractable, plays up well, and any point of discrepancy which he takes is obviously required by the necessities of his own political situation and by the imminence of a General Election. I am satisfied that he does not favour secession at all ; and incidentally it is interesting to notice that his boy has just finished, and greatly enjoyed, a three years’ career at New College.

“I need not speak of Bruce and Coates, for both are more Imperial than the Imperialists. They have given great and constant support. The disturbing element has been provided by the representatives of the Irish Free State. But this must not be misunderstood. Their position is of course more difficult than that of any other Dominion. The only opposition they have to meet is Republican and anti-British ; and as you well know, the policy of every Government must inevitably be conditioned upon the point of view of its own Opposition. They have raised tiresome points, frequently being in a minority of one, but their manner has throughout been extremely courteous. Cosgrave at the first meeting said on behalf of the Free State that they desired to see this Empire great and prosperous. They have all expressly recognised the Crown as the common link of Empire, and an Irish Minister is to lay a wreath on the Cenotaph side by side with his colleagues from the other Dominions. When you recall the state of affairs which existed only four years ago, I think you will agree that the Irish settlement is working better than in our most extravagant hopes we could have anticipated.”

*November 4, 1926 (to Lord Irwin).*

“There are no less than 300,000 men working in the pits, and in my opinion the crumbling process is complete. The other Trades Unions have allowed what they are pleased to call a voluntary levy in aid of the miners, though it is obvious that what is voluntary is not a levy, and what is a levy is not voluntary. I regret this because it may give some slight degree of encouragement to the more obstinate among the men. But I am exerting all my influence now, such as it is, in the Cabinet to gain a victory. I do not see the point of losing about £300,000,000 in this insensate struggle without coming away with some trophy. In other words, I think that Cook and Smith must be plainly and undeniably defeated ; that the Miners’ Federation must be made plainly to face the consequences of complete discomfiture ; and that another agitator of the type of Cook must be taught that it is wise, before he

involves his union in an anti-social and revolutionary strike, to reflect that it may not only ruin the finances of that union but also his own career."

*November 11, 1926 (to Lord Irwin).*

"We have had another very hectic week. Coal Committee meetings and Imperial Conferences at the rate of two or three a day, and nearly every night a horrible banquet. The Imperial Conference is, as I told you last week, going extremely well.

"The Miners' Federation contributed a final exhibition of incompetence and erraticness by obtaining further discussion with us upon written assurances made by them to the T.U.C. that they would recommend district settlements with no fetter upon the discussion of any relevant topic. Having obtained an interview upon this basis, they wasted a day and a half in the attempt to discover what safeguards of a general nature we could afford for the protection of the men in certain broadly definable matters. It was not till a day and a half had passed that we discovered that the Bolshevick element was just strong enough (I believe by 16 votes to 14) to produce even at this period a majority against committing themselves to the district settlement. We thereupon broke off and refused to discuss anything until the men's representatives, who had deceived us so often, had equipped themselves with actual power. I understand that at the delegates' meeting Cook was defeated and that powers have been given to open up the whole matter. I have made so many predictions that I am shy about making any more. I nevertheless confidently predict that the thing will be over by the time you receive this letter."

The long-drawn-out strike came to an end in November 1926. Lord Birkenhead was now able to take a brief holiday, and to give some thought to the legislation that must be passed to prevent the recurrence of such ruinous follies on the part of the Trade Unions. He wrote:

*November 25, 1926 (to Lord Irwin).*

"Now that the Coal Strike is virtually over—I give its final stages in another paragraph—I think that I shall be able to go for a month to the sunshine in Madeira. I have really had a very heavy time during the last five weeks. I have been the only Cabinet Minister who has been both a member of the Imperial Conference and of the Coal Committee. The coincidence of these duties has involved me in constant labour, and of course in very grave anxiety. Nothing does me so much good as a sea voyage.



“You ask me about our Trade Union legislation. Although a great deal of work has been done in that matter, the situation is still somewhat fluid as the Committee has not yet presented its report to the Cabinet. The three or four great points of principle which require decision can obviously only be dealt with in Cabinet. I think that the Committee will recommend the strictest possible control over picketing. It will recommend an explicit declaration that a General Strike is illegal. It has found the proposal to enforce a compulsory ballot to be beset by grave practical difficulties, and I do not think that it will make any recommendation upon this matter. It is drafting a clause as to the compulsory levy which the Cabinet can adopt or not, as it likes ; but the Committee felt, and I think rightly, that they could not undertake the responsibility of making a recommendation on what is essentially a matter of high Cabinet policy.

“I am not very much alarmed by the effect these proposals are likely to have upon our domestic prospects. But I view with alarm the certainty that our two main measures will be, the first to curtail the powers of the Trades Unions, the second to increase the powers of the Peers. I am, and always have been, alarmed that we may find ourselves involved in another Peers and People election, in which all the active anti-Conservative forces in the country may establish a fugitive common foothold. The persistency of George Younger landed us with this obligation when he manufactured week by week machine-made resolutions in order to embarrass the Coalition. And the incredible folly of Salisbury, in advising the Unionist Peers to dismiss the Coalition proposals, which gave us, in my opinion, all that we really need, and certainly all that we shall ever be able to get, has provided us with a legacy charged with the deepest anxiety. It is too early to speak with any affectation of knowledge, but I am quite certain that we shall find the next election both anxious and critical.

“The discredit of the Miners’ Federation is now complete. Torn by internal dissension, they have been unable to prevent what are practically unfettered separate negotiations in each district. The result is that the Bill to set up the appeal machinery proposed by the Government dies in the womb, with hardly any regret. In the meantime the number of men returning to work goes up by leaps and bounds, and the immediate prospect is so encouraging that all the coal restrictions are being withdrawn except those on export. The victory over the Federation is to all appearances complete. The future prosperity of the industry is still beset by many clouds.”

On December 9, 1926, when Lord Birkenhead was acting as Home Secretary during the absence through illness of Sir

William Joynson-Hicks (afterwards Lord Brentford), he was asked by a Labour deputation to grant an amnesty to persons sentenced for offences relating to the strike under the Emergency Powers Act. He answered them by quoting cases in which serious violence had been used both to non-strikers and to the public. In one instance a deliberate attempt had been made to wreck a train. The deputation were clearly taken aback by his recital of the facts, and dropped the demand for a general amnesty, and went away satisfied that the less grave cases would be considered.

With the New Year came the new Government programme.

*February 3, 1927 (to Lord Irwin).*

“In the field of domestic affairs we have decided that our first and principal measure must be the Bill for the reform of Trades Unions. It will make a great row; and we shall have a very bitter session. But two considerations have made it plain that we must proceed. First, the thing is in itself right and was made inevitable by the industrial disturbances of last year. Secondly, our party, both in the House of Commons and in the country, is inflexibly determined, whatever the risks may be, that we shall adopt this course.

“Neville Chamberlain’s Poor Law Bill is to be prominently in the shop-window of the King’s Speech, but in my opinion it is far too disputable and ambitious for any hope that it will reach the Statute Book this session. Personally, I doubt its ever getting there. We have disposed of, till next year, the Home Office Factories Bill, which is very controversial, is strongly opposed by the manufacturers, and has a great many enemies among our own people.

“The House of Lords reform also goes over to the year 1928. Next year will see, or nearly see, the end of our effective power, and my own view is that we are not really likely to see any considerable reform in the House of Lords. The real pity is that Salisbury forced that House to reject the very modest Coalition proposals. These could then have been attained by general consent; they are hardly so attainable to-day. And of this I am satisfied; that there could not be a worse session for putting forward proposals for the reform of the House of Lords (always so liable to misrepresentation) than that which immediately precedes an appeal to the country.”

Lord Birkenhead had long felt that Bolshevik interference in British politics was intolerable and must be checked. Moscow had openly contributed large sums to the funds of the miners

on strike and was suspected of supplying a great deal more money privately to the more revolutionary of the Socialist agitators. He repeatedly drew attention to these facts in his speeches and sharply commented on the brutality and inefficiency of the Soviet dictatorship. In February 1927 the Soviet Government formally complained of Lord Birkenhead's "immoderate language". He paid no attention to the objection. Speaking at Birkenhead in the same month, he referred in severe terms to the Labour Party's dealings with the Soviet-led revolutionaries in Canton, and described the General Strike of 1926 as a "criminal conspiracy against the State". Unfortunately, his Ministerial colleagues were not all of the same mind.

*February 17, 1927 (to Lord Irwin).*

"We have had a long and indecisive Cabinet on the question of whether or not we should clear the Bolshevists out of the country. The discussion is to be resumed. Opinion is very strong in the party and in the House of Commons in favour of getting rid of them. The Foreign Office is most strongly opposed to this course. I should think that by a narrow majority it will for the moment make its view effective. But the *Daily Mail* has commenced an intensive campaign upon the other side which finds a great echo among the more energetic of our own supporters. I suspect that in the end we shall be kicked into taking this course. If this anticipation is well founded, we had better do it now."

*February 24, 1927 (to Lord Irwin).*

"We have sent a pretty stiff Note to the Soviet Government which may conceivably bring things to a head one way or the other. Our intimate information is that they do not really want to break with us, partly because such a breach would injure whatever financial credit they have in this country, and, more important, the credit which they either have or hope to gain in other countries."

The Trades Disputes Bill was the main feature of the new session. Lord Birkenhead wrote:

*April 7, 1927.*

"We have published our Trades Union Bill and are in for a first-class row. That is inevitable and all to the good. I have no doubt that we shall get through with a fight successfully. The Prime Minister, however, most unaccountably and against the Cabinet's

understanding of what he was going to do, authorised the publication of the Bill before the Easter recess, when all Labour organisations meet and declaim, instead of either having the Second Reading debate in the House of Commons before the adjournment, or withholding the publication till after the recess. This is extremely bad tactics, but we must hope that the ground lost may be recovered."

Lord Birkenhead defended the Bill with great vigour in a speech at Manchester on April 30. He reminded the audience that the Trade Unions owed all their legitimate privileges to the Conservative party. But the Liberal Act of 1906 had given the unions excessive powers which they enjoyed in no other country, and those powers, which they had grossly misused, must be curtailed. Trade Unionists who wished to subscribe to the Labour Party must definitely contract to do so. Members of the Civil Service must obey their official chiefs and not the executives of their Trade Unions. No general strike could be regarded as lawful. He ridiculed the Labour Party's threat that they would repeal the new measure when they came into power—a threat that has, of course, proved vain.

The session produced a complete surprise in the extension of the franchise to women of twenty-one—a concession which Lord Birkenhead regarded as both unnecessary and undesirable.

*April 13, 1927 (to Lord Irwin).*

"Winston's unpromising Budget has proved a great success. Everyone is enormously relieved that we can get through another year without adding anything to the income-tax and without any raid upon the Sinking Fund. Both the Press and the City are enthusiastic. He made, as he always does, on a great occasion, a very remarkable speech. The effect of the Budget has undoubtedly been to strengthen, at least for the moment, the position of the Government.

"The Cabinet went mad yesterday and decided to give votes to women at the age of twenty-one. Every speaker was against the proposal on its merits. It was universally conceded that there was no demand for the change in the country. We were nevertheless held to be precluded from voting according to our convictions by a pledge which our light-hearted colleague, the Home Secretary,<sup>1</sup> had given on a Private Member's Bill on Friday, with the Prime Minister sitting beside him. It was not even argued that any Cabinet decision had authorised a change so dangerous and so revolutionary. But against the strong

<sup>1</sup> Sir W. Joynson-Hicks.

protest of Winston, myself and others, it was decided that we were such honourable men that we could not possibly fall short of a pledge which was delivered without even the pretence of consulting the Cabinet."

*May 5, 1927 (to Lord Irwin).*

"We have now had two or three days' discussion of the Trades Unions Bill on the second reading in the House of Commons. The Socialist Party have behaved incredibly badly. No Ministerial speaker has been allowed to open his mouth in sustained and continuous argument. A particularly horrid demonstration was made last night against the Prime Minister, who is by no means at present completely restored to health. Nothing but the restraint of our own people, whose indignation you can imagine, prevented the whole affair deteriorating into a pandemonium. Of argument, none was produced by any of the Labour spokesmen."

*May 12, 1927 (to Lord Irwin).*

"The Labour Opposition have commenced their intensive campaign in the country against the Trade Unions Bill. Up to the present the opinion of our organisers is that it has missed fire, and that the introduction of the Bill has strengthened rather than weakened our position in the country. It is too early to attempt a dogmatic prediction, but I incline to think that this view is well founded. Ramsay Macdonald and the other leaders of the Labour Party have placed themselves, it seems to me, in a great electioneering dilemma by promising to repeal the Bill if and when they return to power. Such a promise does not seem to me to afford a very appetising election programme."

In May, at last, he and Sir William Joynson-Hicks converted their colleagues to the necessity of breaking with the Soviet.

*May 26, 1927 (to Lord Irwin).*

"You will have been interested to notice that at last we have got rid of the Bolsheviks. Personally I am delighted, though I think that we ought to have done so the moment the General Election was over; and I have been trying to procure such a decision ever since. I am satisfied that we are absolutely right and shall sustain no injury of any kind in consequence of this step. They never traded with us because they liked us, but only because it suited them. If it continues to suit them, as it must, they will continue to trade with us. Our average gold payments to them in the past few years have been about

£15,000,000 sterling a year. Without these payments, I do not think that they could have sustained their new exchange. Materially, therefore, if I am right in these views, we lose nothing ; and upon the other side we have sustained immense moral gain. We have got rid of the hypocrisy of pretending to have friendly relations with this gang of murderers, revolutionaries and thieves. I breathe quite differently now that we have purged our capital of these unclean and treacherous elements."

The Second Chamber question came up again and again, to little purpose, in the summer of this year. Lord Birkenhead commented shrewdly :

*June 23, 1927 (to Lord Irwin).*

" We are now at the beginning of a House of Lords row. Personally, I should have thought the whole thing a mistake, except for one consideration, that you must enable the Second Chamber to function when a Labour Government is in power. There must, for instance, be not only representative leaders of the Trades Unionist movement, but there must be representative followers. No Second Chamber, in other words, can function in such a case unless it provides an adequate method to the Government of the day by which it can state its view, not merely through the mouths of so-called leaders, but with the support of an adequate number of followers.

" It is, for instance, inconceivable that a new Socialist Prime Minister would be content with the present leaders of the Labour Opposition. Are we then to have a dozen more hereditary Peers, very unsuitable in every way for an hereditary rank, and so on *ad infinitum* with the creation of each new Socialist Government ? If this is indeed the course to which we are committed, I think that the House of Lords will perish very rapidly amid public contempt."

He was on old familiar ground when he intervened in the debate of July 7, 1927, on the Bishop of Liverpool's Liquor (Popular Control) Bill. The local veto policy had always excited his strenuous opposition, and his speech undoubtedly settled the fate of a Bill which he described as " ill-conceived, confusedly thought out, financially unsound, and in absolute antagonism with the spirit and traditions of the British people ". He poked fun at the late Earl Russell who had incautiously argued that " something ought to be done ". That assuredly meant, he observed with truth, that the speaker had not the slightest idea of what ought to be done. Lord Russell had

complained that a publican who proposed not to serve a customer with more than two drinks had been prevented by the brewer from carrying out his plan. Lord Birkenhead reminded him that they were both members of Gray's Inn, "where it was their pleasant and hospitable habit not to separate until about midnight"; would it be a grave reflection upon them or upon the Treasurer if in the course of those long hours more than two drinks were supplied?

From this time onward the Secretary of State became more and more absorbed in the difficult problems of the Statutory Commission in Indian Reform, and his private letters to the Viceroy seldom refer to domestic affairs. One very characteristic epistle deals frankly with a personal matter, in which he suffered one of the greatest disappointments of his life.

*May 3, 1928 (to Lord Irwin).*

"The Oxford Chancellorship will naturally interest you and me, and you might be glad to have my impressions. I make no secret of the fact that in my humble judgment there is no one alive who, having regard (1) to his academic career, (2) to his record of achievement in public affairs, (3) to the sustained and constant contact which he has maintained in relation to Oxford, has claims as high as myself. I received an invitation signed by five Heads of Houses and four of the most distinguished Professors in Oxford to stand, whatever the Caucus recommended. But I have long since made up my mind that I would never contest the Chancellorship unless there was a sentiment so strong in my favour that one could almost describe it as unanimous. My friends tell me that the clergy were against me. Of this I am the last man in the world to complain. But I feel that I have a small grievance that the clergy should deny me the Chancellorship of Oxford, to which I conceive myself on every ground of merit entitled, whilst by the same post I receive a letter from the Archbishop of Canterbury entreating me as an old friend to support the Revised Prayer Book in the House of Lords.

"The Caucus has selected Salisbury. He is a great gentleman; he is the Leader of the House of Lords; he is a great friend of yourself and myself. But he certainly has an even more surprising claim. He gained the Fourth Class in Science, an academic achievement which, I believe, was not approached by any candidate for that School at that period for five years before or five years after he qualified for a degree. But do not think I am bitter about the business. I think that if I had stood I should have won. Eustace Percy came up and told me at the

Cabinet that he was supporting Salisbury because he heard that I was. The Archbishop of Canterbury made it plain to me that he thought I was the only man for the position. But, as I have said, I love Oxford so much; I conceive myself so much in the debt of Oxford that I would not value the Chancellorship unless it came to me with the general recognition that on all grounds it was desired that I should undertake that office. These observations have little reference to our official duties, but I know how keen an Oxford man you are, and sometimes it pleases me to vary the routine of our correspondence by enlarging upon topics in which we both take a interest, but which for you in your present situation are necessarily remote."

By a strange chance the recipient of the letter has now attained what the writer regarded as the highest distinction that an Oxford man can win.

In the autumn of 1928 Ministers were concerning themselves with preparations for the General Election that was fast approaching. Lord Birkenhead's last private letters to the Viceroy discussed the outlook frankly and in no sanguine terms.

*September 13, 1928 (to Lord Irwin).*

"I am almost the only Minister who is in London and I am making it a three or four days a week affair. In the absence of Cushendun at Geneva and of Austen in the neighbourhood of the 'still vexed Bermoothes', I am taking charge of the Foreign Office and was able to give some intermittent, and I hope not altogether unfruitful, assistance to the efforts of this Office to persuade the Foreign Office that the invasion of islands at present British by Persian nationals must be met a little more effectively than by pointing out that the action is of an ungentlemanly character.

"The season being dead and Parliament not sitting, there has been more than the usual crop of newspaper alarms and excursions. But while some of them may no doubt be dismissed as speculative or premature, it seems certain that Baldwin, if returned to power at the next General Election, will find himself confronted by a depletion of old and experienced Ministers, due either to ill-health or other causes, the like of which has not confronted a Prime Minister—not even Bonar Law—in my political memory. I am entirely in favour of giving a chance to the young men. But I do not believe in too many new arrivals without departmental experience in the Cabinet at the same time.

"Of course, the matter may prove to be academic because we may not win the Election. Here I find myself unusually unwilling to



attempt any prediction at all, for I find conditions very baffling and elusive. On the one hand the Government has, in my opinion, done extremely well. Perhaps we do not swagger enough about it, or at least as effectively or audibly as we ought to do ; but I am in some genuine doubt as to whether there is a real appreciation of the difficulties we have had to confront, and of the degree of success which has attended our efforts.

“The Labour Party, as you will have observed, has at long last plucked up courage to purge itself of most of its Communist following. This, besides being obviously good patriotism, is, I think, good electioneering, a consideration never very far from the mind of Jim Thomas. A change may gain them the support of a considerable section of thoughtless but, in the main, moderate opinion which likes a change from time to time.

“I cannot really see, in spite of the millions and the newspaper stunts, that the Liberal Party is cutting a great deal of ice. Injure us they will and must ; but unless they come to some arrangement with the Labour Party (of which there is no sign), I cannot believe they have a chance of coming back eighty strong.

“These considerations must be of absorbing interest to you, not merely because of your own political views but because of the profound reactions which a change in the Government here may so easily produce upon the Indian situation as that situation will be when the Simon Commission has presented its Report.”

*October 3, 1928 (to Lord Irwin).*

“We are gradually assembling in London after the Recess. We had a gloomy Cabinet on Monday in which we discovered, as invariably happens, that we have about five times as many commitments as we can possibly liquidate if we are to have an Election in May. The position in fact appeared so serious that it was greatly discussed whether we could not, without running an undue political risk, postpone the date even till the autumn. No decision, however, was taken.

“The Prime Minister has come back in very good health and spirits from Aix, having succeeded, which seems wonderful, in not seeing an English newspaper for a fortnight.

“The recent decision of the Bishops about the Revised Prayer Book, which you will have seen in the papers, lends, as it seems to me, great interest to the warning which I gave to the Conservative Party, after the first decision of the House of Commons and before the second, of the inevitable result of the second rejection of the measure.

“The Bishops have done exactly what I predicted, and what anyone but a congenital idiot ought to have seen that they must do, if Parliament again rejected the measure. Having committed themselves to

the propriety and orthodoxy of the revised edition, they had obviously disabled themselves from interfering with any clergyman who employed it. The result of the rejection, therefore, by the House of Commons has been, as I said would be the case, to make it quite certain that every incumbent who desired to use the revised edition could and would do so with impunity.

“There will undoubtedly be further acrimony and possibly disquieting and disruptive tendencies. Even the Establishment Staff may be in danger. Jix, like a Roman Senator, wrapping his toga round his head in sombre pain, has announced that the situation is so grave that he cannot make any announcement till he has thought over the matter in all its bearings. I cannot help thinking that it would have been to the public advantage if he had preceded all his allocutions on this subject by a similar period of incubation.

“I am told, though I was not there, that the Party was in high spirits at Yarmouth. As usual on such occasions the Die-hards were in a great majority and attempted to force the Prime Minister’s hands in the matter of safeguarding. But there is no political capital to be made out of this issue or out of any tariff proposal which does not involve the taxation of food. In my opinion the situation of the Party is, at the present moment, promising. We must, of course, lose many seats. But we can afford to lose many and still retain a compact working majority which could govern the country for four years more. And if we secure that, we shall, in my judgment, unless we are unlucky, have overcome all the worst of our post-war dangers.”

*October 11, 1928 (to Lord Irwin).*

“It now seems certain that the Election will take place in the first week in June. I do not believe that any of the prophets has the slightest idea of what will happen. I most sincerely trust, in the interest of the Indian situation, that we shall come back, even if only with a compact majority of fifty. One shudders to think of the immense problems which, whatever its tenor may be, Simon’s Report must present, being examined by any but a Unionist Government.

“I made another contribution, as you will probably have observed, in the *Times* on the subject of the Revised Prayer Book. Oddly enough, neither the Archbishops nor the Bishops have asked me to make myself their champion in the Press. But I confess I was so exasperated by Jix, whom nobody in the Cabinet supports but the Lord Chancellor, announcing that he was so pained by the attitude of the Bishops that he must take two days’ thought before making any announcement, that I could not help intervening. The Lord Chancellor told me in Cabinet yesterday that he began dictating a reply

but thought better of it. I should gladly have continued the correspondence."

Here this revelation of his political views ended. He resigned office a day or two later.

## XVIII

### LAST PHASE (1928-29)

**D**URING his time at the India Office Lord Birkenhead had used his pen freely. In 1925 he issued his book *Famous Trials*; in 1927 his two-volume work, *Law, Life and Letters*, a collection of miscellaneous essays. These two books were the results of rapid dictation, and do not represent his literary style at its best. He continued his contributions to journalism. A murmuring arose against this practice in Fleet Street, which he treated with contempt. After his return from the United States he described his tour in a series of articles in a London daily paper. He continued journalism while he was Lord Chancellor, and although the murmuring went on, his action was not seriously challenged until he was returned to office as Secretary of State for India. Speeches were then made in the House objecting to his journalistic work, and Mr. Baldwin laid down that the Government had decided that ministers should be debarred from writing articles for publication which were in any way concerned with public affairs. This statement for the moment satisfied the critics. Shortly afterwards further articles appeared by Lord Birkenhead, apparently in direct disobedience of Mr. Baldwin's principle. The Prime Minister was again obliged in the House of Commons to explain that the Secretary of State for India was under contract to complete certain historical articles in monthly magazines, but that he had "most readily" agreed that he would make no further contributions to journalism.

Although he was forced to yield on this point, Lord Birkenhead felt that a great injustice had been done him. He had given up an enormous practice at the Bar to discharge public work and saw no conceivable reason why he should not supplement his salary as Cabinet Minister by journalism. On the question of political articles he was prepared to yield, but he

could see no reason why Cabinet rank should debar him from writing on general topics.

For over two years no article appeared from his pen. In the spring of 1928 an article against any further extension of female suffrage called "The Intrusion of Women" necessitated further explanations and excuses in the House of Commons from Mr. Baldwin, who was placed in a difficult position. It was impossible to deny that the article raised an important political question of the moment. Mr. Baldwin was hard pressed for an explanation. He made a loyal effort to defend the article. Admittedly, it touched political controversy, but "Lord Birkenhead informs me that it treats the subject in so general a form that he did not expect that exception would be taken to it on this account". This answer was evidently not thought satisfactory, and the Prime Minister added, "That there has been an error of judgment on Lord Birkenhead's part is the very worst I can say".

Lord Birkenhead was beginning to feel cramped by office. In a long official life he had spent as much as or more than he had earned. He had to consider his family, and journalism was closed to him. The idea of retirement came to him again, and the rumours went out that he would retire after the next General Election. Later it was learned that Mr. Baldwin had agreed to release him earlier in order that he might at once take up certain directorships. Mr. Baldwin accepted the resignation on October 10, 1928, and wrote :

*Secret.*

10 DOWNING STREET,  
WHITEHALL.

MY DEAR F. E.,—

I have thought very carefully about our conversation of yesterday evening. I am quite clear that for the sake of a few months I ought not to stand in the way of what you propose, and I think, desire to do. You will not misunderstand me when I tell you that we shall part on my side at least with a feeling of personal regret that I could not have believed possible four years ago!

Yours ever,  
S. B.

Mr. Ramsay MacDonald wrote :

*Private.*

UPPER FROGNAL LODGE,  
HAMPSTEAD, N.W.

22. 10. 28.

MY DEAR BIRKENHEAD,—

I am so sorry to hear that you are leaving our goodly company of unjust men making other people perfect. May you make money and find peace. If you do, pray let me know, for it is high time that I began the same quest.

With all my best wishes,

Yours very sincerely,  
RAMSAY MACDONALD.

When he left office he was appointed as Knight Grand Commander of the Order of the Star of India. He was given audience at Sandringham and stayed there for the night as His Majesty's guest. Jane, his Cairn terrier, by special dispensation from the King, shared his bedroom.

It was now disclosed that directorships in some of the most important companies in England were awaiting him. He became Chairman of the Greater London and Counties Trust, a great merger for the development of electricity. He became also a director of Tate & Lyle, the famous sugar refining house, and of Imperial Chemical Industries, Ltd. The large directors' fees which he now received caused a lull in his literary work, but his pen was still waiting dipped in sarcasm for the appropriate victim. It was at this time he wrote of Sir Herbert Samuel :

“ Strange, incredible as it seems to most of us, he has really quite sincerely believed that political Liberalism contains something that is beautiful, admirable, and even useful to the nation. As long, therefore, as that lamp is burning with however feeble and flickering a light, he must conceive it to be his duty to foster and cherish it as long as it burns at all. And so, at the very moment when most people would have looked the other way and let it expire, this loyal and prudent old Liberal virgin produced his austere and honest bellows.”

His literary output at this time ended with a prophetic book called *The World in 2030*, which brought serious charges of plagiarism from Professor J. B. S. Haldane, the Cambridge biologist, who cited more than forty-four instances of the

alleged offence. This was a most unfortunate affair from which Lord Birkenhead did not emerge well, and it is permissible at this distance of time to explain how the situation arose. In the preface to his book Lord Birkenhead professed to be following—" *longum post intervallum* in the footsteps of Jules Verne, Bellamy, Wells and Haldane ". Mr. Haldane, after reading the book, claimed that a number of passages and ideas had been uprooted from his book *Daedalus*, and that such a wholesale theft was not adequately covered by the words of the preface. In an article in the *Week End Review*, entitled " Lord Birkenhead improves his mind ", he wrote: " I have no objection to anyone treading in my footsteps. I object to them stealing my boots to do so, and I am amused when they do not know how to put the boots on."

Lord Birkenhead was clearly in a very difficult position. There was no doubt that he had borrowed freely from *Daedalus* with only the most perfunctory acknowledgment. Everyone wondered how he would extricate himself. He was, on this occasion, the victim of his own carelessness. For the past year he had been delegating more and more the preparation of his literary work to "ghosts". In this book the passages complained of were not written by him, but by a criminally careless understudy. The practice in itself was indefensible, and this was the first and last time that it occurred. He saw that the only way to avoid public ridicule was to divert Mr. Haldane from his specific charges and lure him out into wider fields of argument. He waited three weeks before writing an extremely ambiguous reply in the *Daily Express*, the majority of whose readers had not followed the original controversy, making an irrelevant counter-attack on Mr. Haldane. Mr. Haldane replied, making the childish tactical blunder of allowing himself to be side-tracked from his main charge into denying Lord Birkenhead's fresh charges. Lord Birkenhead then allowed the matter to drop. After this episode, although "devils" still prepared his material, no word appeared over his signature which he had not dictated himself.

Meanwhile, he was not allowed even in the freedom of retirement to hold his pension without censure. He was attacked by a section of the Socialist Party on the grounds that he had lost his status as pensioner when his position in the City pre-



AT COWES, 1929

LADY BIRKINHEAD, LORD BIRKINHEAD AND LADY PAMFLA SMITH





vented him taking part in the judicial work of the House of Lords. Lord Birkenhead, enraged by this criticism, replied that he had never, when eligible, shirked his part in the work of the Law Lords, and that his pension was entirely apart from such work. He explained that an ex-Lord Chancellor was usually found presiding over the Court on which he sat. If his pension related to his duties, it was curious that the President should receive only £5,000 per annum while the Law Lords sitting below him were receiving £6,000. He continued in the face of further attacks to insist that the pension was unconditional, that he would continue to draw it and justify such a course, but that he would use the money to create a Trust Fund to be administered for the benefit of charity.

After the General Election he paid yet another visit to New York. This time he went on behalf of the Greater London and Counties Trust, and he made many friends among the great industrialists and princes of Wall Street. On his return he made occasional appearances in the House of Lords, once to criticise the Labour Government's attitude towards recognition of the Soviet, and later to attack violently but ineffectively the recall of Lord Lloyd from Cairo. Yet all was not well with him. His speeches were still crisp, compact, winged with irony. Maturity had softened the metallic hardness of his earlier style. Yet it was clear to those who knew him well that his mind was now being driven by a flagging will-power. He seemed throughout the last winter suddenly to lose his prodigious zest for living. He became liable to periods of gloom and preoccupation. It was only later that one knew that his health had for months been causing him deep anxiety. He confided his fears to no one and withdrew further into himself. He had seen his brother, a man of great strength, cut off in his prime by a cruel and lingering disease. Perhaps he scarcely dared to admit even to himself that he was distracted by the dread of a similar fate. In the spring of 1930 he went with friends to Biarritz. The news was suddenly wired to Lady Birkenhead that he was seriously ill. She hastened to join him. His brother-in-law, Colonel Furneaux, was with him at the time of his illness. The sunshine of Biarritz had not stirred him from his apathy. All his life he had taken violent physical exercise; now he refused to play golf or tennis. One

night Colonel Furneaux was urgently summoned to his room. F. E. had had a severe hæmorrhage. He was standing in the middle of his bedroom when his brother-in-law entered. He said calmly: "Claude, I think I'm done for." Colonel Furneaux was terrified when he saw how much blood he had lost. He went towards him and tried to take him by the arm to bed. With incredible strength F. E. hurled him away. Then he went to bed.

Next day two French doctors were summoned, and they found that a small blood-vessel had burst. F. E. began to get better. He went for long motor drives through the resinous pine-woods, and sat in the sunshine on the terrace of the Hotel du Palais. When he was well enough, he came home and went to his house in Northamptonshire. It was reported that for some months he would not be able to take part in public affairs. He stayed at Charlton depressed, and sometimes unapproachable, but appeared to have recovered from his illness. In August he fell ill again with bronchial pneumonia following a chill. He was moved to his house in London. He lay ill for weeks, struggling desperately against his fate. At intervals, cheating hopes of recovery deluded his family, but on September 30 the doctors came for the last time to say that his strength was exhausted.

The outside world could scarcely believe that so brilliant a light had been so suddenly extinguished; yet it was a melancholy solace that he, too, had died at his splendid prime, the mechanism of his mind and his body unchilled by age. There was no declension of his powers; no slow dissolution of the body, no painful darkening of the intellect. "I am glad to think", he had told the students at Glasgow University, "that I have still much of the student in my own disposition. I myself never intend to grow old."

His body was borne to Gray's Inn and placed in the little chapel. For thirty years his heart had glowed with warmth and pride for that exquisite place. Now he lay there in state. For a few days he reposed in that grey sanctuary secluded from the roar and tumult of Holborn. For days hundreds of people, both friends and strangers, filed silently past the bier. His ashes were taken to Charlton, his country home. After a simple service he was buried in the parish cemetery. It was

a golden October day, and the sun filtered through the woods, and touched with warmth the grey cottages and yellow thatches. The little church was filled with statesmen, judges, men of commerce and of the Press, who had gathered for the last scene. The choir sang :

“ I loved the garish day and, spite of fears,  
Pride ruled my will: remember not past years.”

\* \* \* \* \*

Sir Austen Chamberlain, who knew him so well, has written a tribute and estimate of his character which may appropriately end this book.

“ ‘ Balfour gave to politics the finest mind of his generation.’ So F. E. once said to me, and the same may be said with equal truth of F. E. himself. Indeed, the very brilliance of his gifts sometimes obscured his real work. His wit so dazzled men that they failed to see the solid thought that underlay it; his mordant tongue often concealed the generosity of his nature, and the cynicism with which he sometimes spoke led men to underrate the depth of his convictions and to miss the consistency of his career. Yet no one among my contemporaries had thought more deeply or formed clearer views on the great problems of our day and no one was more staunchly true to his convictions regardless of the consequences to himself.

“ He was often called an adventurer, and in one sense the charge was true, for at heart F. E. was a Romantic. Life was to him a high adventure which he encountered gallantly, seeking its prizes and accepting its reverses in the same gay spirit. He would not have been out of place riding in hat and cloak, sword-in-hand, in the company of the Three Musketeers to save a lady’s reputation or to restore a king to his throne.

“ Thus in some ways he belonged to an earlier age ; in others he was intensely modern. On some questions, like the rest of us, he had no strong views and was ready enough to conform to the attitude of his colleagues and the Party, but if a principle were involved, he

‘ Never sold the truth to serve the hour,  
Or paltered with Eternal God for power.’

I recall how in his first session he voted alone against his Party in a critical division, resisting all attempts to cajole or constrain him. He was a young lawyer just coming into prominence. He had his own way to make without any help from the accident of birth or from influence, and he had chosen the politico-legal career. No young member had greater need of the good-will of the Whips and of the Leaders of his Party, but the issue was one of imperial policy—the immediate grant of self-government to the Transvaal and Orange Free State. F. E. had reached the conviction that the Government were right and his own Party wrong. He would allow no thought of his own interest to influence his action. He voted for the Government, though he stood alone.

“He was by tradition and reflection a Tory, but he belonged by conviction to the new school of democratic Toryism which Alderman Salvidge had made the dominant force in Liverpool politics. In social questions he was a reformer with a passionate love of justice, a scorn not less passionate of anything which seemed to him to savour of cant or insincerity, and a courage which never failed.

“In council he spoke seldom, and, when he spoke, he spoke briefly, but with a rare precision and clarity. He never needed to recommence his argument or to restate it. He seemed instinctively to find the perfect expression of what he wished to say, and the clarity of his statement and the force of his argumentation were often decisive of the issue. If sometimes the apparent levity of his language and a certain cynicism which he affected in his speeches led the public to think him rash and thoughtless, I know no man with whom it has been my good fortune to act whose nerves were steadier or whose judgment was cooler in those testing hours when difficulties multiply and dangers threaten which prove a man’s soul.

“These are great qualities and rare ; yet there is another which for all his friends comes first. He possessed ‘the genius of friendship’. He, who never had enough money for his own needs, opened his purse lavishly to help any who appealed to some friendship or companionship of his younger days, and he gave of himself as readily as he gave of his purse. As long as he lived I felt that I had a friend who, if I ever got into trouble, would for the sake of old days stand by me when all others

turned away, upon whose wise counsel I could safely act and on whose unstinted help and unfailing support I could rely.

“It was possible to be acquainted with him, and to dislike him intensely ; it was impossible to know him, and not to love him.”

THE END



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