
preface to the third edition

The Publishers have thought it fit to bring out the Third Edition of this book after a lapse of nearly five decades. The book deals with practically an abstract subject. As the very name of the book shows, each advocate has to develop his art by himself. It requires not only a deep study of rules contained in the statute, the case-law thereon and also master both of them in the light of the particular facts and circumstances of each case and present the same in the best manner so as to convince the Judge and win the case.

When it is said that it is the art of the advocate in persuading the Judge to give the judgment in his favour, he must have good knowledge of History and Literature to have good vocabulary and be able to draw upon history and literature to make his arguments convincing and better appreciated. Sometimes he may have to quote certain passages or anecdotes from literature to develop his argument and narrate some instances from history also. Mere legal knowledge, however great it may be, may not suffice to convince the Judge. Sometimes, knowledge of history and literature goes to embellish one's arguments.

The author has collected materials from various books and authors and also collected various lectures and incorporated them at relevant places in this book. He is highly indebted to all those eminent people.

Though Jury trials are in vogue in foreign countries like America and England, Jury system is done away with in India by the Criminal Procedure Code, 1973. Hence Chapters XXXI to XXXV are not relevant now. However, they are retained in this book for the readers to know how it is in foreign countries.

The author has thoroughly revised the existing matter in the Second Edition and thus improved the same wherever necessary, re-arranged some of the chapters for better reading.

The author is highly thankful to all the members of his family for having assisted him in bringing out this book.

The author hopes that the readers will find this book highly useful and give the same reception to this Edition also, like the previous ones, if not more.

GUDUR
Nelloor Dt. (AP)
15-5-2003

Y RAMA RAO
Author

preface to the second edition

In submitting to the profession and the public this second edition of the “Advocacy Series” it may not be out of place if we offer a few words of explanation. It is now over two decades since the first edition of this work was published. We have hitherto resisted the temptation to re-publish it as we felt that there was not much of new material on the subject that we could give in a second edition. But a new edition of the Bible need not contain material any more than what Bible is. The institution of advocacy and the art of cross-examination is as old as human civilization is and if any new material is added it is only the old art shown in a different light. As copies of the first edition are not available now for a long time, we owe it to the present generation of lawyers to place before them this edition. Though the manuscripts for this edition were under preparation for the past two years, its publication could be commenced only recently.

The first edition of the work was published in seven volumes. The present edition is completely revised and has been condensed in several respects without losing any of its original utility and substance. The first three volumes of the original edition which then appeared under the titles of ‘Methods of Cross-examination’, ‘Cross-examination as to particular classes of witnesses’ and ‘Cross-examination as to matters testified’ in “Illustrations in Cross-examination” is now condensed in one handy volume under the title “Cross-examination-Principles and Precedents”. The second volume of the present edition “Advocate-His Mind and Art” will cover volumes IV, V and VI of the previous edition*. The third volume “Legal Ethics-Duties and Privileges of a Lawyer” will also include chapters on Legal Practitioners, Contempt of Court, Pre-trial, etc. The present edition of three volumes will thus cover the entire field of the activities of a lawyer in his profession, and in his relationship with his client, the public and the court.

In the preparation of the present edition of this work we have used among other books on the subject the very interesting magazines, Case and Comment, The Reader’s Digest and the World Digest. All the standard works dealing with the subject had been already consulted in the preparation of the previous edition. We can venture to state that we have exhausted all the available literature on the subject and the book contains the essence of every useful fore-runner in the field. As the distinguished lawyer and politician, Shri T. R. Venkatarama Sastri, who wrote the Foreword to the first edition has stated, there is little or no literature dealing with the methods in cross-examination adopted by great Indian Advocates. Some of the famous anecdotes relating to eminent advocates of our courts are only illustrative of their individual calibre and power of personality rather than an exposition of their methods. Moreover, the rather too sharp a division between the ‘Trial Lawyer’ and the “Appellate Side Lawyer” in our country is responsible for many eminent exponents of the art being thrown in the background. The scope for the play of resourceful intelligence and methods in trial of cases have also been to a great extent curtailed by the rigid formalities of the law of evidence and procedure. Whatever justification there was in the early days—and there was very good justification—for advocates to play on

* Volume IV, Art of the Advocate, Volume V, Preparation for Trial and Volume VI, Trial and Tactics

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the sentiments and emotions of Judges and Jurors to get an acquittal for their clients or to get a verdict in their favour, such methods are not tolerated in these days. The practice of jury trials in civil cases lent great scope for advocates in English and American courts to exhibit their talents. Except in sessions trials there is no jury trial in our courts and as such the scope for following the methods of the masters of the art in those countries has its own limitations in our country. But still the study of the methods of the masters in the field is a very useful and necessary equipment in dealing with witnesses and eliciting the truth by cross-examination. It may be that proficiency in any art is inborn and is not learnt by set rules or illustrations. But the art of an advocate though not learnt in any school of advocacy or through any lectures on advocacy is cultivated to a great extent by a study of the masters. Such a study is of both educational and recreational value to the lawyer. It will be useful at least to know how to avoid the mistakes of others. After all, if one is to hold himself up as an object-lesson one can serve both as an example and as a warning.

And before we take leave of the reader, we may make a few observations about the utility of a book of this kind in the modern set up. It is admitted that advocacy is an intellectual combat, mind wrestling with mind. But in the early days the combat was in the field of human endeavour. We are told of the dramatic effects created in court by a skilful cross-examiner. We are told that the lawyer almost became a perfect actor in putting forward his client's case before the Judge and the Jury. A few chosen questions are said to have drawn the truth even from the most consummate liar. A stern look or a sharp rebuke from the counsel is said to have made an evasive witness confess his guilt. An impassioned address of counsel has sent the jury in tears and vehement address of the prosecutor has made the public rise in revolt against the criminal. Now the times have changed. The intellectual combat is seen more in the unravelling of the complex interpretations of an ever-growing body of legislation. Examination of witnesses and the utility of their answers have become subsidiary. Presumptions and arguments on hypothetical basis take the place of real evidence. As courts of justice are courts of law, the leaning is more in the direction of establishing abstract precedents and the temptation for a lawyer to become too legalistic is all the more attractive. In this atmosphere it may look a little hard to justify the utility of a book of this nature. But irrespective of such absolute justification, if the reader finds the book interesting and instructive we shall feel that our labours have not been in vain.

We owe a great debt of gratitude to the Honourable Chief Justice, High Court of Judicature, Madras, who has been so kind as to go through this book and give his valuable opinion. Our words fail to convey our heart's feelings for the excellent foreword he has so readily given. His Lordship combines in himself the great qualities of a Jurist, Lawyer, Scholar, Writer and Critic. So, we feel doubly confident that with His Lordship's blessings we judiciously embark upon this venture with redoubled vigour and renewed enthusiasm.

MADRAS
12-5-1953

THE AUTHORS

preface to the first edition

It has been said that “the supreme characteristic of a great lawyer is not so much an expansion of the brain as an enlargement of the heart, a wide and generous sympathy, a nervous system carefully attuned to all the passions and prejudices in life.” He must be a man that not only knows human nature, but has an appreciable quantity of human nature in him; a man, in whom, when his client seeks advice, he finds not merely a cold-blooded jurist, a profound oracle of the law, but a man strong in his sympathies and full of resources for evading or escaping difficulty—resources that come not altogether from law books, but from the book of experience, which he has so diligently studied, both in his own life and in the lives of others. The true lawyer, when he stands before a court or jury, stands not in his own shoes holding out his client at arm’s length, but is an advocate in every sense of the term, standing in the place of his client taking upon himself the burden of his case, and enwrapping himself so intensely in the feelings of his client that words burn on his lips as he denounces the deceiver, and tears start to his eyes as he relates the sorrows and briefs of his client under the heel of the oppressor; a man indeed, who struggles in defence of the life, fortune and honour of his client as if it were his own. Such is the truly great lawyer, as distinguished from a mere jurist.¹

The preparation in the college equips the brain with legal principles but it affords the young student little or no guidance for the actual conduct of cases in courts of law. The young man just called to the bar finds important interests of his clients entrusted to him and often feels it difficult to find his way to justify the confidence that has been reposed in him. “I never felt so much in want of a leader as I did when I had to cross-examine that doctor” was the remark of a talented junior of considerable standing at the bar.²

It is not always given to everyone to have a proper leader to guide him in all the exigencies of his professional career. But it is open to every one to study the methods of the great masters in the art of Advocacy.

“There is a very prevalent notion that all discussion or comment on the subject of cross-examination is necessarily useless, if not worse. This seems to have arisen partly from a superficial view of the matter, and partly from a misapprehension of a passage in Quintilian, in which he is supposed to intimate his opinion that the faculty of interrogating witnesses with effect must be the result either of natural acuteness or of practice. If the Roman critic meant, what he certainly does not express—his language being that no rules can be laid down for the guidance of

1. Robinson’s American Advocacy.

2. Harris’ Hints on Advocacy.

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advocates in this respect—he was almost inconsistent with himself; for in the very chapter from which the above passage is taken he gives a series of rules for that purpose, which have been admired in every age, and are recommended by high authorities in our own law. It would indeed be strange if, while perfection in all other arts and sciences is attained by the combination of study and experience, the faculty of examining witnesses with effect—which depends so much on knowledge of human nature, and acquaintance with the resources of falsehood and evasion, and is coeval with judicature itself—should be destitute of all fixed principles.”³

No less a man than the late Mr. Joseph Choate spoke of the value of studying the lives of the master-minds of old and deducing right principles of conduct from the recorded experiences of the great advocates of ancient and modern times. In the course of his address, at the Farewell Banquet by the French and the Bar of England, 4th April, 1905, at Lincoln's Inn hall Mr. Choate said, “In my youngest days I could not resist the attraction of those historical and dramatic scenes and incidents in the lives of the world's great advocates which everybody knows. Who would not have given a year's ransom, a year of his life, to have heard Somers in the case of the seven bishops, in a speech of only five minutes breaking the rod of the oppressor, winning the great cause, and at one bound taking his place, the foremost place, among the orators and jurists of England? Or Erskine, the greatest advocate anywhere and of all time, when he dared to breast even the mighty Mansfield's admonition that Lord Sandwich was not before the court, “And for that very reason I will bring him before the court!” and he entered the tribunal that morning an absolutely briefless barrister, and went out with thirty retainers in his bag and followed by a crowd of solicitors engaged in a race of diligence to see which should reach his chambers first. Or Webster pleading before the Supreme Court of the United States for the little college in the hills where his intellectual life began, and throwing successfully around it the shield of that most beneficent of all constitutional provisions that no State shall pass any law impairing the obligation of contract. I started in life with the belief that our profession in its highest walks afforded the most noble employment in which any man could engage, and I am of the same opinion still, until I became an ambassador and entered the *terra incognita* of diplomacy. I believed that a man could be of greater service to his country and his race in the foremost ranks of the bar than anywhere else, and I think so still. To be a priest, and possibly a high priest, in the Temple of Justice; to serve at

3. Best on Evidence.

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her altar, and to aid her to maintain and defend those inalienable rights of life, liberty and property upon which the safety of society depends; and succour the oppressed and to defend the innocent, to maintain constitutional rights against all violence, whether by the executive, or by the legislature, or by the resistless power of the press or, worst of all, against the ruthless rapacity of an unbridled majority, and restore it to its proper place in the world; all this seemed to me to furnish a field worthy of any man's ambition."⁴

It has been our main aim to collect in these short volumes the experiences of some of the great and successful advocates in the East and the West. We have refrained as far as possible, from laying down rules and principles at any great length. Wherever any such principles have to be enunciated, we have done so by citing them in the choice words of the best and acknowledged writers on the subject. But we have preferred imparting instruction by illustrations rather than by exposition.

It has been truly said that "the novelty of an argument is often the charm that holds a waiting audience. If one expects to win law suits before a Judge and Jury, and all of them must be won or lost this way, he will early learn the advantage of striking statements and original illustrations. By apt stories Lincoln won many cases. By their use Depew pleased people, and the art of pleasing is a wonderful acquirement for a Court-room. The ancients were ever alert to enforce a point by illustration. Fables and short sayings, facts drawn from example, were favourite means of making strong reasons impressive. Among the great mass of people, even today, matters are still reasoned out by comparison. There is a certainty of conviction in all such arguments. They please many senses at once. They capture the ear, interest the mind, and hold the attention. A rare fable, a short pithy story, or a forcible quotation will take with a crowd, or jury, and create sentiment."⁵

In the preparation of these volumes we have consulted books too numerous to mention. In fact, we have studied all the best books that have been written in England and America on the subject of Advocacy. But prominent mention has to be made of the following standard works to which the authors have made constant reference, without a close and careful study of which, it would not have been possible for the authors to have commenced the preparation of these volumes:-Moore on Facts, James Ram on Facts, Wellman's Cross Examination and Day in Court, Wrotlesley's Examination of Witnesses, Cox's Advocate, Harris' Hints on Advocacy and Illustrations in Advocacy, Hardwicke's Art of Winning

4. American Law Review, Vol. 39, pages 586-587.

5. Donovan's Tact in Court.

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Cases, Elliott's Advocate, Elliott's General Practise, Donovan's Tact in Court, Skill in Trials, Modern Jury Trials, and other excellent treatises of the same author on Advocacy, Daly's Preparation for Trial, Ballantine's Experiences, Will's Circumstantial Evidence, the Works of Taylor, Best and Wigmore on Evidence, Robinson's American Advocacy, Robinson's Bench and the Bar, Strahan's Bench and the Bar in England, Hawkins' Reminiscences, Alverstone's Recollections of the English Bar and the Bench, Peter Burke's Romance of the Forum, Reed's Conduct of Law Suits, Sir George Witt's Life in the Law, Purcell's Forty Years at the Criminal Bar, Howell's State Trials and other series of state trials and biographies of eminent lawyers, to the authors and publishers of which works we hereby acknowledge our great indebtedness. We are also indebted to several excellent articles, cuttings and jottings in several of the prominent legal journals in America, England and India. Prominent mention would have to be made of Green Bag, the American Lawyer, the American Law Review, the Canadian Law Times, the Harvard Law Review, and the English Law Journal. Chief among the Indian Journals consulted are the Madras Law Journal, and the Criminal Law Journal. Although some of these books and journals had been consulted on a previous occasion, opportunity has been taken to read them all once again to trace the incidents and anecdotes to their original sources and make fresh and more suitable extracts for the preparation of these series.

Our grateful thanks are due to the Honourable Mr. T.R. Venkatarama Sastri, Advocate General of the Madras High Court for the very kind and valuable foreword which he has written for this work.

Our thanks are also due to Mr. R. Narayanswami Iyer, B. A., B.L., High Court Vakil, Editor and Proprietor of the Madras Law Journal for kindly allowing us the use of the very excellent and rare collection of books in his library and to Messrs A. Ramratnam Iyer, B. A., LL.B., A. Rajagopala Iyenger, B.A., B.L. and P. Raghavier, B.A., B.L., Vakils, for the help rendered by them in the preparation of these works.

We are conscious that the work is far from being perfect. Any suggestions for improvement from our learned brethren in the profession will be gladly received and given effect to in the subsequent editions of this work.

In the preparation of these small volumes our main aim and earnest endeavour has been to acquaint the juniors just commencing practice with the experiences of the successful advocates of old, so that they may start their career with courage and confidence:

Lives of great men, all remind us,
We can make our lives sublime,
And departing, leave behind us,
Footprints on the sands of time.

THE AUTHORS.

“Where law ends, tyranny begins.”

—*William Pitt.*

“If democratic institutions are to survive, it will not be simply by maintaining majority rule and by swift adaptations to the needs of the moment, but by the dominance of a sense of justice which will not long survive if judicial processes do not conserve it.”

—*Chief Justice Hughes.*

“Law is the great organ through which the sovereign power of society moves.”

—*Bacon.*

“Law is the last result of human understanding acting upon human experience for the benefit of the public.”

—*Johnson.*

“Whatever we have lost of our control in Parliament, we have yet a sheet-anchor remaining to hold the vessel of the State amidst contending storms:—we have still, thank God, a sound administration of justice secured to us, in the independence of the judges, in the rights of enlightened juries and in the integrity of the Bar;—ready at all times, and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man when brought for judgment before the laws of the country.”

—*Erskine.*

“I have pondered on the case before us with anxious deliberation. I entertain great respect for the legislature whose acts are in question no less respect for the enlightened tribunal whose decision we are called upon to review..... I have endeavoured to keep my steps *super antiquas vias* of the law, under guidance of authority and principle. It is not for judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and having done this, our justification must be left to the imperial judgment of our country.”

—*Justice Story in the Dartmouth College case.*

“He must not merely look to principles, but must have them in readiness to act upon them; not as if they had been taught him, but as if they had been born in him.”

—*Quintilian.*

“A lawyer without history or literature is a mere mechanic, a mere working mason.”

—*Sir Walter Scott.*

“The sparks of all the sciences in the world are taken up in the ashes of the law.

—*Anonymous.*

“In the formulary and statutory part of law a plodding blockhead may excel, but in the ingenious and rational part of law the plodding blockhead never can excel.”

—*Dr. Johnson.*

Law to a lawyer is to do anything for his client the court will allow him to do.

—*Riggs.*

“The turn of a case is like the wind in winter—we know not its direction save as we feel it. What a science—what an art—what test of genius—what a forum for wisdom and eloquence, is a trial for a life before a jury of twelve with a nation for an audience.”

—*Donovan.*
