
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 griefs 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 every one 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 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

1. *Robinson’s American Advocacy*
2. *Harris’ Hints on Advocacy*

(contd.)

preface
to the first edition (*contd.*)

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 Bench 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 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

3. *Best on Evidence.*

(*contd.*)

preface
to the first edition (*contd.*)

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 Cases, Elliott's Advocate, Elliott's General practice, 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

4. American Law Review, Vol. 39 Pages 586 and 587.

5. Donovan's Tact in Court.

(contd.)

preface
to the first edition (*contd.*)

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 the 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. Venkatrama 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 junior 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.*

MADRAS
October, 1927

P RAMANATHA AIYER
N.S. RANGANATHA AIYER

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 Sashtri, 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 the sentiments

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

(contd.)

preface
to the second edition (*contd.*)

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

P RAMANATHA AIYER
N.S. RANGANATHA AIYER

preface to the third edition

This Edition is coming out after a lapse of nearly five decades from the last Edition. The Art of Advocacy comprises three aspects : (1) knowledge of Legal Ethics, (2) Art of Cross-examination, (3) the manner of presentation of acts and law concerning those facts in such a manner as to convince the presiding officer and be successful in the case.

This book deals with “Cross-examination” which itself is an art. Some are born good cross-examiners. Some others become good by study and by observation of others doing the same. One must have a profound knowledge of human psychology to understand the human nature. It requires study of History and Literature, so as to tackle a particular witness during his prosecution in view of the nature of the witness.

One should know the relevant statutory provisions concerning the cross-examination of witnesses, questions which cannot be asked, and questions about connected matters. So also one must have knowledge of the latest rulings rendered by the Apex Court and the various High Courts. Besides, the cross-examiner must deal with a particular witness depending upon his nature, viz., whether he is an honest witness, liar, expert witness, timid witness, loquacious witness, woman witness, so on and so forth. He has to frame his questions to elicit the required answers from him. There are different types of cross-examination depending upon the cross-examiner. In short, a cross-examiner must be an actor who knows how to play his part and disappear from the scene.

This book deals with all the aforesaid aspects, which will be revealed by going through the contents of the book. The Editors have consulted various books, Indian and Foreign, to collect the requisite material. The Editorial Board expresses their further deep debt of gratitude to all those authors in that behalf.

The editors further express their thanks to Shri Y.R. Rao, Advocate, Gudur, Nellore District, Andhra Pradesh, for having kindly supervised this book at the instance of the Publishers.

The Editors crave that the readers give this Edition the same reception as its predecessors if not more.

15th August, 2002
“Independence Day”

EDITORS
