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BIOGRAPHICAL NOTICE OF THOMAS ERSKINE.

THE subject of these pages is the third son of the late earl of Buchan, and youngest brother to the present earl; the Scotch noble an eminent statesman at the court of George the first, and afterwards a distinguished officer in the navy. He is, however, well known that he entered very early in life into the navy, a profession for which he had imbibed a strong predilection.

He went to sea with the late Sir John Lindsay, nephew of the great earl of Mansfield. He never, it is believed, had the commission of lieutenant, but by appointment for some time in that capacity, by the appointment of his captain. The reason for this is, that the navy are said to have been the slender chances of his promotion; and he finally only served as a lieutenant by the friendship of his commander, he was unwilling, after having been honored with such a distinction, to return to sea in the inferior capacity of midshipman.

He entered into the army as an ensign in the Royals, or 5th regiment of foot, in the year 1758, not so much from a disposition (as it is said) as because his father with a small and finally extinct estate, had not the means of affording him, with convenience, to pursue one of the learned professions. He went with this regiment to Minorca, in which island he spent three years, and continued in the army about 1765.

During the period he continued in the army, he had acquired considerable proficiency in the sciences and versatility of his talents in conversation. Mr. Bowtell, who met him about this time in a mixed company in London, mentions, in his Memoirs of Dr. Johnson, the delight which the factor and himself felt from the ability of a gentleman, who has no other than Mr. Erskine, in discoursing on some temporary topic, which, at that time, happened to be an interesting question of dispute in the circles of the metropolis.

Whether the confidence of his friends, or the embarrassments of a feebly income, led him to make preparations for the study of the law, it is of no importance to enquire. The relation, from whatever cause it proceeded, null, in a great measure, have been supported by that confidence in his own talents, which is inseparable from great and elevated minds; from the spirit of adventure, which is incidental to genius, which overlooks slight obstacles, and is invincible by ordinary difficulties.

There is a fashion among biographical writers, to discover in the person whose life they are writing, an innate original predisposition for the peculiar department of science or literature in which he has been eminent, forgetting that, in the nature of things, the pursuit must be wholly accidental, and that, "in every region of the air," the flight of powerful intellects will be equally lofty and vigorous. It has, however, been said, and we have reason to believe with truth, that Mr. Erskine had no merit whatsoever in the extraordinary adventure of embarking in a profession and a pursuit, but that he was literally and most unwillingly forced upon him by the importunities of his mother, the counsels of Bechan, after the death of his father; and that the hopes of succeeding in it were fortified and kept alive against his own propensities, by her counsel and persuasions. Although, in the privacy of domestic life, the great characters and the brightest talents may pass away without notice and remembrance. He was a truly most uncommon acquisitions and singular penetration. She thought, no doubt, that she perceived the capacity of her son, and in the confidence of parental affection, placed out this glimpse of his future destination, while he was absent in the army at Minorca.

Mr. Erskine was about twenty-five when he commenced his course of legal study. He entered as a fellow-commoner of Trinity College in Cambridge, in the year 1777, and, at the same time, inserted his name as a student on the books of Lincoln's Inn. One of his college declamations is still extant, as it was delivered at Trinity College,

Chapel. The thesis was the revolution of absolute and hourly necessity of a law. It displays the ordinary powers of eloquence by the bulkiness of our courts of justice, with the bulkiness of our courts of justice, in which it consists in a fort of analytical correctness, and its highest utility is derived from the habits of artificial accents, which it imparts, and the nice and Rhetorical fabrications, in which it is perpetually occupied. Although Mr. Erskine never professed as a professed special pleader, the notion of his being ignorant of that branch of the legal science, is founded on the gross misapprehension. No one understands the principles of that science more correctly; in any one more dextrous in the feasible application of them, as a species of language; a phrase by the late Sir William Jones accurately defined the art of the special pleader.

In what manner our advocate cultivated the art of public speaking, does not clearly appear. It has been said, that he was an assiduous attendant at Cochrane's Hall, where a debating club of some estimation was at that time held. But the style of Mr. Erskine's oratory bears internal testimony against this assertion. The doctrine that is cultivated in these societies is altogether of a nature remote from the uses of the bar, or the necessities of the delay of the law. It is a matter of fact, that the most part conducted by a list of speakers, or rather disputants, who vociferate a collection of crude declamatory sentences to a tumultuous audience, which, taking no cognizance of the sense, or style of declamation, shows its applause on the orator who makes the greatest noise, and not his work with the greatest vehemence. Such are not the academies in which English eloquence is nurtured, or perhaps the most distinguished of our authors have acquired their perfection in public speaking, more by silent meditation and study, than by declamation in public. Unquestionably he can never be a good speaker, who has been habituated to that noisy game, of which the greatest praise is a noisy of utterance, and by which the rules and harmony of the language are so apt to perpetuate violence and perversion.

He had now completed the probationary period allotted to the attendance in the courts; and was called to the bar by the title of Mr. Erskine. It is a singular exception to the ordinary custom of professional merit at the English bar. It is not worth enquiring how long he continued a rude auditor in the back benches of the court, amongst the crowd of young men, who may be, not unaptly, compared to the ghosts that linger on the banks of the Styx for a passage over the lake of Letes; and a lingering partiality of fortune, he was not tormented by the "hope deferred," and the frequent expectation of a brief in Westminster-Hall, which if many men of promising talents are doomed to undergo; as an opportunity was almost immediately afforded him in displacing himself in Westminster-Hall, in consequence, who had been removed from the government in Greenwich Hospital by Lord Sandwich, and the Earl of the Admiralty, and out of the governors of Greenwich Hospital, had been charged with having published a libel against that nobleman, and the attorney-general was instructed to move for leave to file a criminal information against him; this was the occasion of Mr. Erskine's first speech in court. In opposing the motion of the attorney-general, an opportunity presented itself to him of entering into the merits of the case in behalf of Capt. Ballie. He expatiated upon the services which he had rendered by his clients, on the firmness with which he resisted the intrigue and artifice to which he attributed the prosecution first on foot against him.

In the course of this speech, he attacked the noble earl in a tone of sarcasm and indignant invective. Lord Mansfield interrupted him more than once, but the address of the speaker, and the facility of his misadventures. It was at that time common practice to observe *am, fo sit* (he knows to the court and the bar, commencing, with asperity of remark, on the conduct of a government functionary who held an elevated post in the administration, and

former times were willing to allow it. The

disfinguring himself by a species of confidence, not understood, felt in one of the public speaking, under circumstances that rendered it more prudent to abstain from personal severity, and to conciliate the court he was addressing. These reflections on Lord Sandwich are unquestionably severe; but, if any faith is to be had in the testimony of his contemporaries, both in office and in opposition, they are not unfounded. The late Mr. Luttrell, speaking of him in the House of Commons, observed of him, with a pointed allusion, that *there is in his conduct such a systematical combination of guile, that the utility and perfection of the vice almost constituted it a virtue.*

This was the fifth trial of his talents at the bar, having been called only in Trinity Term, and having been employed for Captain Ballie in the defence of the Earl of Sandwich. He is said to have been solicited for this opportunity to no interference, recommendation, or connection. His acquaintance with captain Ballie originated from his having accidentally met him at the table of a common friend—Almost immediately afterwards Mr. Erskine appeared at the bar of the House of Commons, as counsel for Mr. Carnan, the book-keeper, against a bill introduced by Mr. Nichol, then prime minister, to re-vest in the universities the monopoly in almshouses, which Mr. Carnan had succeeded in abolishing by legal subtleties, and as a great good fortune to place the noble lord in a considerable minority upon a division.

To the reputation which these speeches conferred upon him, it has been said, that he lost the false-golden face he had experienced in his professions, and that as he left the court upon that occasion, nearly thirty briefs were offered to him by the attorneys. Of the various cases in which he was employed, it would be absurd to expect any mention; as they are confined only to the ordinary and daily transactions of the term and the business.

The public feelings were now also, excited by the interesting trial of Admiral Keppel. Mr. Erskine was retained as counsel for the admiral; a circumstance that was owing to the ignorance which the council, Mr. Dunning and Mr. Lee (who were originally engaged) displayed of the law, besides, without some knowledge of legal subtleties was, in a great measure, unintelligible—Mr. Dunning recommended Mr. Erskine as qualified for the duty, having been made acquainted with the manner in which he had pulled the former part of his life.

The duty of a counsellor before a court martial is very limited by the rules, and usage of the court: he is not permitted to put any question to the witnesses; but may suggest to his client such as occur to him as necessary to be asked; nor is he suffered to address the court; and almost the only assistance he can render is in the arrangement of his defence, and the prosecution of the witnesses. Mr. Erskine's evidence as he is most likely to be present only to the minds of those who are habituated to the rules of testimony in courts of justice. This service was most effectually and ably rendered by Mr. Erskine. Having drawn his defence, Mr. Erskine previously examined all the admirals and captains of the fleet, and satisfied himself that he could fully maintain the innocence of his client, before the fleet, which he had written for his own use. For his services on this memorable occasion, Mr. Erskine received a thousand guineas. It was the private office of his life to be favored a good and honorable man from disgrace, and even amidst the splendors of his succeeding fortunes, Mr. Erskine ought to look back on this event with renewed satisfaction, as a great blessing.

He was now in possession of the best second business in the King's Bench—By the phrase *second business* is meant that sort of business in which the lead is not given to the conduct of a government functionary who held an elevated post in the administration, and

place which called his talents into activity