

the community, as distinguished from the rights of individuals, there is no moral turpitude in an advocate attempting to get a poor wretch out of the clutches of this law, so long as only fair means are employed to do so. But throughout this discussion this assumption of using fair means only, is taken as granted.

The positive law has its custodian in the prosecutor. If the defending counsel succeeds in evading it, what rights are violated? The rights of the community, and these rights are the creation of positive human law. Are they more sacred than the right given by the material law to every individual to use every means, even to go the length of killing another under certain circumstances, in order to preserve his own life? If that life has not been forfeited by natural, or positive divine law—and I know of no principle of either that works such a forfeiture—is an advocate committing a moral wrong in defending it by every fair means? It might be argued that this would lead to the utter subversion of society. But we must deal with things as they are, and not as they would be in theory. Now it is a fact daily exemplified in our courts, that even the most brilliant advocacy cannot save a man whom evidence shows to be plainly guilty. The famous Birchall trial may be cited as an instance.

There is no necessity, therefore, to speculate on what would be the theoretical outcome of the argument adduced, when its practical issue has been before the world from the earliest period of history, or despite the fact that murderers have been defended in every age—and in none perhaps with more brilliancy than in our own—society still exists, and life is safer at the present time, at least, under English rule, than it ever has been before. And it must not be forgotten that the apparently most damning circumstantial evidence has often, on closer scrutiny, proved to be merely the result of a conspiracy to ruin the accused. What case was more damning on its face than that against Parnell, in connection with the Pigott letters? And the annals of criminal law show that many an innocent man has been unjustly condemned because circumstantial evidence pointed to him as the perpetrator of the crime. Surely it is

better that ninety-nine guilty should escape than that one innocent should be unjustly condemned, especially when such condemnation means deprivation of life. And if this be granted, who will say that a lawyer is guilty of moral wrong in undertaking cases such as are here discussed, if there be any doubt as to whether he is so guilty, or if he actually knows his client to be the perpetrator? At least there can be none, when, as in most criminal cases, the case is based upon circumstantial evidence, which, though it may be *prima facie* of the most damning character, may, at the trial turn out to be of a nature as compatible with innocence as guilt.

The final charge is that the advocate undertakes cases he knows to be unjust and endeavors by dissimulation to make judges and juries believe that they are not so; to put it plainly that he lies. This bold statement has been already incidentally denied. No true lawyer will undertake a civil case he knows to be unjust. He will, however, especially in criminal matters, lend his assistance to cases which he may have good reason to believe, are in fact other than he construes them to be in his advocacy. Now as long as he refrains from any direct personal assertion as to his belief—for no matter what may be a man's position it does not relieve him of the duty of telling the truth at all times—I conceive there is no moral wrong in a lawyer arguing to put a different construction on a state of facts from that at first sight would suggest itself to him in common with other men. It is no part of a lawyer's duty to assert what is his belief or disbelief in regard to his client's innocence or guilt. No court of law entertains any but sworn evidence. If, therefore, the lawyer knows anything of his own knowledge he should go into the witness box, if he desires it submitted to the jury; and if he has acquired his knowledge by hearsay, it is of a character that would not be listened to for a moment in any judicial forum. The lawyer's true duty is to take the facts as they are put in evidence, and endeavor to put that construction upon them which will be most favorable to his client. And this he must do, not by loudly asserting his personal belief with regard to them, but by logical argument and clear sighted discussion. And