

GENERAL CORRESPONDENCE.

step before the frowns of power, or to tremble under the dread of misrepresentation.) "That," continued the learned counsel, "is true. A man who takes upon himself the obligations of the profession to which I belong swears that he will be afraid to defend no man from fear, favour, or affection, and the justice of this practice will be apparent if you take the other side of the case, and let the prisoner be a man with a cry in his favour instead of against him—there would be no refusal to champion such a case on the part of an advocate. Why should there be so in the other case? In the present instance, too, the prisoner specially needs the services of an advocate; the entire press of the country, an instrument of immense power, and capable of doing much good, has, for a time, forgotten the glorious mission belonging to it, and, as the press has often done in other countries, has apparently endeavoured to spread a feeling against the accused instead of waiting till the trial was over before they commented on the evidence in that manner; and when you consider, gentlemen, that the prisoner has had to contend against all this, against a feeling abroad against him, even such as might influence the minds of his advocates, can we wonder that each of us in our position, you as those who hear and determine his cause and I as his advocate, should feel deeply the sense of our responsibility? It is your duty to come to the consideration of the case with your minds, and as far as you can make them, cleared from all that you have heard outside, and with your minds open to conviction. On the evidence given from day to day it is your duty to consider the case, not merely with the knowledge that the life or death of the prisoner rests on your conclusion, but that the great interests of justice are at stake. So much depends, gentlemen, on your freedom from prejudice in considering this case, that I am sure you will pardon these remarks about the relative positions of advocate and jury."

It will be seen from the above remarks that the Hon. Mr. Cameron, who is the Treasurer of the Law Society of Ontario and the acknowledged leader of the bar, takes a very strong view of the duty of an advocate; in fact, he says there is no discretion with the counsel—for if he is asked to act as the defender of any prisoner, he must accept the retainer. It matters not that his feelings and inclinations may be for the Crown, and that he may even be awaiting a retainer to prosecute (if not actually spoken to or retained), he must accept the criminal's retainer. I understand the oath of a barrister only to require him to *faithfully and fearlessly* advocate his client's

cause *when retained, when he takes upon himself a retainer*, not that he is absolutely bound if offered a reasonable compensation for his services, to take up every defence or prosecution offered him. If he is obliged to take a retainer to defend, he is equally bound to take one to prosecute. Thus, *volens volens*, he might be made to prosecute, to use his talents and his tongue against his oldest and best friend, or a cause or principle which he held dearer than his life! Take, for instance, a lawyer professing strict temperance principles, forced to be retained against his favourite ideas, in favour of illicit traffickers in selling liquors. Imagine a religious lawyer, retained to uphold the publication of books or newspapers, in which the truth of the Gospel of Christ is attacked.

Surely there must be a discretion allowed the advocate to refuse a retainer. I do not understand the duty of an English advocate to be stricter than was that of a Roman or Grecian advocate. Suppose Cicero, who spoke against Cataline and his wicked conspiracy against his country, had had his mouth stopped by a retainer from that man—what would the Romans have said? Suppose Demosthenes had taken up (been forced to do so) the cause of some wicked Grecian, what would his countrymen have said? Suppose an eminent American lawyer forced against his will to defend the murderer of Lincoln. Suppose Lord Brougham forced against his will to prosecute Queen Caroline at the instance of King George the Fourth. Suppose Daniel O'Connell forced by a retainer to prosecute some eminent patriot of his country.

It is thus easy to *put a case* where not only the lawyer's enlightened conscience, but his fellow men, holding high moral views of duty, would sustain him in refusing a retainer to advocate a wicked principle or defend a bad man. It may be asked, then, if all lawyers were to act on this principle, how could a defendant obtain counsel? We all know such a case is not very likely to happen. Clients can generally obtain advocates of some sort. Even admitting such a case, I yet cannot admit that the liberty of action and choice with barristers is so restricted as Mr. Cameron's words would indicate. If my view is likely to operate, in some extreme case, prejudicially to a prisoner, the other view, giving an advocate no choice to refuse a retainer, might often