

CONVINCING THE COURT.

IN theory, the proof of a legal proposition is effected by establishing in argument the existence of a law to which the proposition may be referred. In practice, however, argument is very often more effectively directed to what the law ought to be, than to what it is. It may, therefore, be laid down as a good general rule, that a strong effort must be made to—

Convince the court that the law ought to be in your favor, that it is unfortunate if it should be found to be out of harmony with common sense. Be careful, however, not to imply, that the law is one way and ought to be another. You must *assume* that it is as it ought to be; show what it ought to be; and *then* prove that it is so. Do not understand by this that your argument should reveal your design. A judge would cease to follow if you appeared to be asking him to formulate new law; while, at the same time, if the "ought-to-be" and "is" are skilfully interwoven, you will produce a piece of workmanship through which your opponent will fail to work a hole, let him pull and tear at it as he may. This may appear to be a recommendation to humbug the judge—to give him an "ought-to-be" pill safely coated with "is" sugar. But this appearance is explained by the fact that while a judge may not legislate directly, he frequently accomplishes the same object by so construing doubtful law as to bring it into harmony with the dictates of reason.

Many persons have listened to the finest exhibitions of advocacy, and while convinced by the argument have failed to observe its construction: their minds are completely satisfied, but they would be utterly unable to produce the same effect. And while we believe that the ideal advocate, as the ideal artist, is born and not made, we believe, also,