

himself—is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate and casting them if need be to the wind he must go on reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client's protection." This passage was afterwards relied upon by Mr. Disraeli in answer to a criminal information for libelling Mr. Austin, counsel against him in an election petition proceeding, by writing of Mr. Austin's speech in opening that it was "but the blustering of a rhetorical hireling availing himself of the vile license of a loose-tongued lawyer not only to make a statement which was false but to make it with a consciousness of its falsehood." If Lord Brougham's language were to be accepted as a general description of the duties of an advocate it would not be using too strong language to describe it, as one author has done, as "infamous" or another, that if carried to the extent suggested would "render him under cover of the law a virtual highwayman." I prefer the statement of Lord Chief Justice Cockburn that "the arms which an advocate wields he ought to use as a warrior not as an assassin. He ought to uphold the interests of his clients *per fas*, and not *per nefas*." Lord Halsbury in a letter to Showell Rogers, 15 L.Q.R. 259, at 271, says that, "it is the advocate's duty to have primarily before his mind's eye that it is not his own but another's case he is arguing, and to reason earnestly and courageously for it, and not to be awed by the modern ogre who, without any responsibility, sits in his calm retirement and decides for everybody else what they ought to do." Mr. James T. Brady of the New York Bar, lays it down, "that an advocate may fairly present honorably whatever any man who is accused would have a right in truth to say for himself and no more." His duty to both Court and client will admit of nothing less. His character as a gentleman and the dignity of his profession will permit nothing more.

It is the duty of the Judge to declare the law, and whether counsel thinks him right or wrong it is the duty of counsel, for the time being, to submit. In the quaint language of Lord Bacon, "Let not the counsel at the bar chop with the Judge nor wind himself into the handling of the cause anew after the Judge has declared his sentence." The jury are bound to take the law from the Judge as he lays it down for their guidance, and counsel cannot be permitted to argue to the jury against the rulings of the Judge on questions of law, or to suggest that his instructions in that respect are wrong and that they are at liberty to disregard them. With respect to questions of fact it is quite otherwise. Counsel are quite at liberty to appeal to the jury against any opinion upon a question of fact which the Judge may have intimated and to remind them that they, and not the Court, are the judges of the fact (*per Cockburn, C.J., Re Pater, 9 Cox. 547*), and so long as