

CONVICTION UPON CIRCUMSTANTIAL EVIDENCE.

by a succession of wise men, as the best means of discriminating between truth and error.

nonchalance before those present, telling her that to-morrow he should leave for Chicago, and desiring her to answer his first letter from there. He embraced Miss Plumm, at the same time whispering something in her ear. They then left—arriving at the ferry, no boat was in, and they sat down on the cross-beam of the ferry deck; that Feltner took off his hat and wiped the perspiration from his forehead, at the same time handing his cane to Ratzky. When the boat came they went on board, he Ratzky, still retaining the cane. In a moment or two Feltner rose from his seat and walked up and down the cabin once or twice, then went on the deck, as Ratzky supposed, for the sake of breathing the cool air; that the boat shortly after started, and if Ratzky's story be true, he never after saw Feltner alive. That he waited for him to come off the boat when it reached Brooklyn side, but not seeing him asked the ferry-master if he had seen a man passing answering the description given. That he called out the name of Feltner at the top of his voice in order to find him, but concluded that he had gone home. If this story had been confirmed Ratzky would doubtless have been acquitted. It appeared on the trial that when the body was found Mrs. Schweitzer proposed to go and see it, when Ratzky endeavored to dissuade her from doing so. She visited Mrs. Marks, at Ratzky's request, who begged her not to say anything about the matter, giving her at the same time a sum of money to secure her silence. Ratzky soon after left the city. Feltner's body being identified, Mrs. Marks and Miss Plumm were arrested on suspicion as being *particeps criminis*. Miss Plumm committed suicide by hanging herself in the cell of a New York station-house a few days after her arrest.

(Webster, in his elaborate argument in the Knapp Case, declared that "suicide is confession.")

On the trial the prosecution argued upon the theory that Feltner and Ratzky crossed on the Hamilton Avenue ferry-boat to Brooklyn; that Ratzky induced Feltner to go to the club-house, which stands near the water at the foot of Court Street, in order to get drinks; that they had been there before, and that Ratzky having got him there he inflicted the stabs and dragged the body to the water's edge or into the water, and from that point Feltner's body floated into the bay and finally was thrown ashore four days after on the Jersey side. It was shown that Ratzky reached home the night in question at 10 o'clock, that he was heated when he got home, and had Feltner's cane and a parcel belonging to him in his possession; that he inquired if Feltner had come, and on being answered in the negative, he told the story as above. To some in the house he said that Feltner had gone to Chicago. The prosecution argued that Ratzky was the last person with Feltner; that he knew he had wealth—a motive for murder; that Feltner's disappearance on the ferry-boat was wholly irreconcilable with Ratzky's subsequent conduct. If he had mentioned the fact that he had missed Feltner on the boat, why is not the ferryman produced? If Ratzky did not know that Feltner had been made away with, would he have had his trunk broken open next morning and taken his clothes, while making no effort to avoid the risk he ran in case of Feltner's return? Do honest men break into trunks, tell conflicting stories, try to keep dead bodies from being identified, run away, assume disguises, and change their name?

The prosecution examined witnesses on the stand who swore that under a conjunction of favorable circumstances a body thrown into the water on Brooklyn side might float to Jersey shore. But four days had elapsed from the night on which the murder was committed, according to the prosecution, until the body was found. It was not decomposed when found; on the contrary, the blood came from the wounds when probed. It is generally known that a dead body will sink when thrown into the water, and will not rise until decomposition sets in and gases are generated to float it to the surface. The theory is, that it could not have floated, and if not, it was impossible that it could have been carried by the tide from Brooklyn to the Jersey shore. No witnesses were called in behalf of Ratzky, and the jury, after a consultation of fifteen minutes, returned a verdict of guilty. By the law of 1860, a person convicted of murder in the first degree must be confined in the state prison one year, and at the expiration of that time, the governor might order the death penalty to be enforced. By throwing the *onus* of enforcing the penalty on the governor, it was anticipated that the death penalty would be virtually abolished in the state. This law was in force when the murder was committed, but was repealed in 1862; Ratzky was convicted in 1863, and Judge Brown sentenced him to be hanged under the law then in force. On appeal, a new trial was denied, and it was further held, that the court erred in sentencing Ratzky under a law not on the statute-book when the murder was committed.

Having their origin in man's nature, as an intellectual and moral being; and founded (as an eloquent advocate has said) in the charities of religion, in the philosophy of nature, in the rules of history, and in the experience of common life: 29 St. Tr. 266.

The rules as laid down by Wills on Cir. Ev., other writers on the subject have repeated, and are as follows:—

(1.) The circumstances alleged as the basis of any legal inference must be strictly and indubitably connected with the *factum probandum*.

(2.) The *onus probandi* is on the party who asserts the existence of any fact which infers legal accountability: 1 Starkie's L. of Ev., 162; 1 Greenl. L. of Ev. c. 3.

(3.) In all cases, whether by direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.

(4.) In order to justify the inference of legal guilt from circumstantial evidence, the discovery of the body necessarily affords the best evidence of the fact of death, of the identity of the individual, and most frequently also of the cause of the death. A conviction for murder, therefore, is never permitted in our day unless the body has been found, or there is equivalent proof of death by evidence leading directly to that result. The evidence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. This is a fundamental rule the *experimentum crucis* by which the relevancy and effect of circumstantial evidence must be estimated.

(5.) If there be any reasonable doubt as to the certainty of the connection of the circumstances with the *factum probandum*; as to the completeness of the proof of the *corpus delicti*; or as to the proper conclusion to be drawn from the evidence, it is safer to err in acquitting than convicting. This rule follows irresistibly as a deduction from the consideration of the numerous fallacies necessarily incidental to the formation of the judgment on indirect evidence and contingent probabilities, and from the impossibility in all cases of drawing the line between moral certainty and doubt. It has been truly said (Burnett on the C. L. of Scotland, p. 524) that, though in most cases of circumstantial evidence there is a possibility that the prisoner may be innocent, the same often holds in cases of direct evidence, where witnesses may err as to the identity of a person, or corruptly falsify, for reasons that are at the time unknown. As we have seen, the testimony of the senses cannot be implicitly depended upon, even where the veracity of the witness is unquestionable. As where Sir

Ratzky was, therefore, sent back for a re-sentence, and under the law of 1860, he is now in prison at the pleasure of the governor of the state, who may execute the sentence at any time, though an effort is being made to have him reprieved.