

PRESUMPTIONS IN CRIMINAL CASES.

PRESUMPTION OF INTENT.

Such being the general characteristics of presumptions of fact, I proceed to notice specially some of the most prominent among these presumptions, and the first that strikes the eye is the presumption, as it is called, of intent. The first criticism here to be made is that in setting up this presumption we pass from the sphere of inductive reasoning and enter upon that of deductive; and, in so doing, depart from the true field of practical jurisprudence. The syllogism presented to us is as follows:

"Whoever does an act, intended it:
A did this act;
Therefore he intended it."

But the major premise, like all other universal and absolute statements involving human action, is untrue. Acts are so far from being always intended by those to whom they are imputable, that in a large number of cases they are unintended. Negligent offences are perhaps more numerous, and at the same time more varied, than intended offences. For one effect produced by us which corresponds to our intent, there may be a dozen which do not correspond. A telegraph operator may delay for half an hour forwarding a message. His intent, we may presume, is to get his dinner when it is ready. But this delay may produce a multitude of unintended injuries. It may discompose a whole system of railroad connections, so that in some remote spot, of which, perhaps, the operator may have never thought, a collision may occur. It may prevent innumerable appointments from being fulfilled; it may cause innumerable injuries to persons or property on the wide system of roads it affects. The negligence, in fact, usually operates on a far wider surface than the wilful act, simply because the wilful act is usually insulated and intrusive, while the negligence is an omission in the performance of one of a long series of interdependent duties, of which, when one falls all fall. But between negligence and malice there is this fundamental distinction: the first is a lack of intent, arising from intellectual defect; the second is a bad intent, arising from moral defect. It

is of the essence of malicious offences that they are intended; it is of the essence of negligent offences that they are not intended. Of the majority of cases in which one man invades the rights of another, we may safely say the injury, in the form it was perpetrated, was unintended. As to a majority of the cases covered, therefore, by the proposition before us, it is false.

We must also remember, in further illustration of the conclusion just stated, that there are few cases in which the object intended, even among what are called malicious crimes, is actually effected. A number of scholastic distinctions have been taken in this relation, and have been considered by me elsewhere. It is sufficient, at present, stripping them of their technical forms, to notice some of the more prominent.

1. An unintended object may fortuitously intervene between a blow aimed and the person intended to be hurt. A, for instance, shoots at B. After the pistol is aimed, and at the moment of its discharge, A's child suddenly darts in the way. The killing of A's child, so far from being intended by A, is of all things the most abhorrent to him.

2. B is struck by A when mistaken for C. Here A intends to strike B, but intends to strike him under a mistake of person. The intended object is hit, but the object is invested with wrong attributes, and is aimed at under the false belief that it possesses these attributes. A, for instance, as in *Levett's case*, shoots at a casual visitor, B, imagining B to be a burglar. Or A shoots at his child, B, imagining the child to be an enemy whom he designed to kill. Here there is no intention to kill B, as B really is, though there is an intention to kill some one whom B is supposed to be.

3. Or an act may be from a contingent intent. A shoots at B, knowing that B is in a place (*e. g.*, a railway carriage), in which other persons are sitting. A knows that he runs the risk, when shooting at such an object, of killing another person than the one at whom he aims. He kills C, sitting next to B. Undoubtedly he may be regarded as embracing C within the scope of his purpose. But, nevertheless he did not intend to kill C, and would