

PRESUMPTIONS IN CRIMINAL CASES.

touching practical life. High probabilities so high as leave us beyond reasonable doubt, but never absolute certainties, are the strongest proof that can be produced.

It follows, then, that of no conclusion can we obtain, in a court of justice, any evidence which does not consist of a series of circumstances. In other words, we infer certain conclusions from a series of facts. This series of facts may be apparently very simple, as where A says he saw B shoot C. Yet these apparently simple and "direct" cases, as they are called, are after all the most complex and most dependent on collateral circumstances for belief. Establish three or four of what are called extraneous facts: the finding of C's dead body, with wounds inflicted by a weapon shown to belong to B—the discovery of blood and of hair, identified with that of C, on B's clothes—the ferreting out of C's money, secreted in places over which B had exclusive control—the coincidence of B's feet with prints found on the soil near the spot of the killing—B's flight without explanation—and you have a strong case on which a conviction can rest. But limit your case to A's testimony that he saw B kill C, and you have to draw in a multitude of collateral facts before you can convict. Independently of the *corpus delicti*, which must be established, you have to make out the credibility of A. It is true that credibility is *prima facie* assumed until it is impugned on the opposite side. But, independently of such direct discredit, there is no witness that is produced as to whom multitudes of presumptions, based upon manner, self-consistency, objective probability, do not arise. On the testimony of a perfectly impersonal witness—if we could conceive such—of a witness who would give rise to no such presumptions, and invoke no circumstances, intrinsic or extrinsic, for his credit, no conviction could be had. Hence, that which is called the most direct testimony is often the most circumstantial. It rests upon the credibility of the witness and the credibility of the thing testified to, each of which may depend upon many complex conditions.

PRESUMPTIONS ARE INFERENCES FROM FACTS TO FACTS.

All evidence, therefore, we conclude, consists of reason and fact co-operating as co-ordinate factors. The fact is presented to us either by inspection, or by what we call judicial notice, or by our knowledge of every day life, such as is embraced by the term "notoriety," or by the descriptive narrative of witnesses. From these facts we draw certain conclusions. The mode by which we draw them is inductive, and the process we term *presumption*. In other words, a presumption is an inference of a fact from a fact. Of this we may take the following illustrations.

A man accused of crime hides himself and then absconds. From this fact of absconding we infer the fact of guilt. This is a presumption of fact, or an argument of a fact from a fact.

Stolen money is found on the defendant's person, and of this he gives no satisfactory explanation. Here, also, we infer the fact of guilt from the fact of unexplained possession of the stolen money.

"An enemy has done this." The cattle of a farmer are found one day injured so systematically and cruelly, that we can attribute the act only to the settled, malignant purpose of a cowardly enemy, A is such an enemy and we infer that he did the deed. The inference is far from being enough to convict if taken by itself; but it is valuable as one of a series of cumulative inferences. It consists of a presumption of fact—in other words, of an inference from the fact of cowardly hatred to the fact of guilt.

PRESUMPTIONS VARY IN FORCE WITH PROBABILITY.

Presumptions, therefore (limiting ourselves, of course, to presumptions of fact, and reserving the consideration of presumptions of law), vary in intensity in proportion to the probabilities they involve. We may illustrate this position by the presumptions, all of them (exclusive of those springing from his personal conduct) resting on extrinsic facts, on which Dr. Webster's conviction was based.