

PRESUMPTIONS IN CRIMINAL CASES.

There was only one way of evading the effect. Their story could be pierced only at one point—at the time at which it touched the time of the burglary. All the incidents to which they referred might be true, and yet they might not have occurred on the evening of Sunday, October 21st. Though they must have occurred, judging from their internal coherence, on some other Sunday near that time. To test this, they were examined as to the state of the weather on October 21st. They united in swearing that it was rough, stormy and dark. An almanac was sent for, from which it appeared that the moon on that night was full. This was the only evidence at hand to sustain the hypothesis of a change of dates, and the defendants were acquitted. Yet it afterwards appeared that all the incidents on which the *alibi* was based had been transferred from the night of October 14th to that of October 21st. It was the night of Sunday, October 14th, that was rough, stormy and dark. There could have been no doubt that on that night the defendants were at their home, and were there seen by the twelve witnesses produced on the trial, and that it was then that the various things were seen and heard which were detailed by the witnesses with such harmonious minuteness as to defy cross-examination. But that the defendants should have been at home on Sunday, October 14th, was in no way inconsistent with their being out house-breaking on Sunday, October 21st.*

It may be said that here again is scepticism, with the difference that, while under the last head, the scepticism to which we were led was scepticism as the subject, *i. e.*, scepticism as to whether any witness is to be believed, now it is scepticism as to the object, *i. e.*, scepticism as to anything testified to really exists. The answer is that the only scepticism here invoked is the scepticism which is incident to whatever is credible, and without which nothing that is incredible, in the moral sense, can exist. It is not necessary here to appeal to Lessing's famous saying, "if absolute truth were offered to me on the one side, and pro-

bable truth on the other side, I should say, in all humility, give me the probable,"—for in this matter we have no choice. We cannot apprehend the absolute if we would. We can only, as to matters actual, as distinguished from matters ideal, reach approximate truth. We know, for instance, that a straight road is the shortest distance between two geographical centres, but this is a truth which, absolute as it is, cannot be illustrated in perfect exactness in any road over which we travel. When it is stated, for instance, that between Baltimore and Washington a particular road is straight, then we have a statement which may be approximately true, but which we know is, in some respects, false. Of the impossibility of perfect accuracy in human testimony, as to matters we might suppose to be the most susceptible to demonstration, we have a remarkable series of illustrations in a trial which took place in Massachusetts some few years ago, and in which the issue was whether a certain signature had been forged by tracing it over a signature that was genuine. On the one side, several of the most eminent microscopists in the land swore positively that under the ink they discovered pencil tracings. On the other side, about as many equally eminent microscopists swore just to the contrary. It became important, also, to determine whether the two signatures, comprising sixteen letters, coincided. A distinguished professor of mathematics, occupying the chief chair in his department in one of the chief universities of the land, swore that the probability that such a coincidence could be produced otherwise than by superimposition was 1 to 2,666,000,000,000,000,000. To rebut this testimony a series of signatures, taken at random from those of John Quincy Adams and other men of equally marked hand writing, were produced, in which it was sworn that there were numerous cases of entire coincidence. * We have to conclude, therefore, that from even the most exact and competent witnesses, and as to topics particularly capable of demonstration, absolute truth cannot be established on any question