

PRESUMPTIONS IN CRIMINAL CASES.

ted, because there is no witness, the truth of whose statements is not dependent for credibility more or less upon his character, his capacity and opportunities for observation, his freedom from prejudice. In other words, to take up again the question of identity, which we have here selected as the simplest to which our attention can be turned, when a witness says, "I saw A at a particular place, at a particular time," this statement is circumstantial, because it depends upon the intelligence, fairness, and means of observation of the witness.

3. We have just been dwelling on what may be called the *subjective* factor in credibility. We now turn to the *objective* factor. *There may be two persons so apparently alike as to deceive an ordinary observer.* In the Tichborne prosecution, not only do we encounter a number of witnesses confident that the claimant was Roger Tichborne, but there was a mass of testimony to the effect that the claimant was a third person, not Arthur Orton, who he probably really was, but Castro, an Australian bushman, who was certainly neither Orton nor Tichborne. And though cases of close similarity among living persons are very rare, such is far from being the case with the dead. It is extraordinary how much confusion there is as to the identity of the remains of persons only recently deceased. Among the sad incidents of the morgue, not the least sad is the way in which, sometimes, several distinct relationships are set up for one corpse. Two or three women have been known to swear positively, and apparently honestly, that a particular body was that of a deceased husband. We are not without illustrations of the same confusion in our forensic history. In Udderzook's case,* one of the most striking in the records of disputed identity, the deceased was killed in reality, in order to perpetrate an insurance fraud, after having previously been killed by proxy, a dead body, dressed in his clothes, being slipped into a shop where he was working, and which was then set on fire. The false corpse was identified by several witnesses as being that of the living man, while the real corpse was afterwards de-

nied by other witnesses to be his body after he was dead. Nor is this strange. In the period which immediately succeeds death,

" Before decay's effacing fingers
Have swept the cheek where beauty lingers,"

expressions previously unrecognized start out, while others previously recognized, recede.

We must remember, also, that in most cases of crime, persons whose identity is afterwards disputed rarely appear in broad daylight. The burglar can only commit burglary in the dark; and if he is seen at all it is under confusing shadows, or in the reflected light of a dark lantern. Disguises, also, are employed, which, in the late case of the Northampton bank robbery, leave the voice as the only means of detection. The assassin is ready, if he can, to adopt another dress, and to imitate another's gait and manner; and cases are reported in which the person assailed, believing that one with whom he was at enmity had perpetrated the offence, was clinched in the belief by the fact that the appearance of the supposed enemy was imitated by the real assailant. There may be, also, a mistake as to time, by means of which an *alibi*, true in everything but date, may be constructed. Of this we have an illustration in a recently-reported English trial. Two men were indicted for burglary on the night of Sunday, October 21st, 1878. Strong proof was adduced against them in the shape of the testimony of four separate witnesses, three of whom identified them as coming from the house in which the burglary was committed, and the other of whom believed that he saw them when a little further on their road. This case was met by the testimony of twelve witnesses, chiefly relatives and friends, who swore that during the whole evening in which the burglary was committed the defendants were in their own home, where they lived together, being brothers-in-law. The witnesses so produced went into a great mass of details, the whole testimony forming so consistent a narrative that the more minute and the more ramified became the cross-examination, the more unassailable did their statement become.

* Report in Whart. on Hom., app.