

PRESUMPTIONS IN CRIMINAL CASES.

the plaintiff's case was closed, pulled out a release. "But the release"—so the client afterwards objected to his attorney—"was never given to me; I never heard of it before." "That is true," was the reply, "but the shortest way was to meet the plaintiff on his own ground, so we forged the release." It is unfortunate that in our criminal courts there is a class of lawyers who are unscrupulous enough to seize upon any defence that is available, no matter how false they may know it to be. That there are witnesses also ready to swear to any defence, when they do not run the risk of prosecution for perjury, is illustrated by the hangers-on who can be counted upon to offer and to swear to straw bail. It would be unjust, therefore, to impute to the client that which may be the entire work of the counsel. We have no right to infer guilt, even if false testimony is brought into court knowingly by counsel.

But we must remember that there are many cases in which such testimony may come in without the complicity of either client or counsel. We have already noticed instances in which perjury has been deemed by the witness committing it, a point of honour. Lord Cockburn, in his *Reminiscences*, notices several trials in which high-minded Scotch lords, who would scorn an untruth themselves, looked upon it as a matter of course that their retainers should come into court to swear to whatever might help their chief. But in many cases where false testimony is rendered, even this extent of connivance cannot be imputed. A man is to be tried on a capital crime. It is natural to suppose that among those whose being is wrapt up in his, there may be someone ready to sacrifice himself, if it need be, for the rescue; someone like the Scotch servant, who would "rather trust his soul to God than his master to the Whigs." Yet this may be without any complicity on the part of the person on trial.

It should be remembered, also, that speculations, implicating others in a crime, may be thrown out conjecturally by persons themselves entirely innocent. For some days before the arrest, last summer, of Castine Cox, a series of letters appeared in the newspapers, suggesting

various persons as guilty, and one or two witnesses were ready to testify to facts, grossly exaggerated, if not fabricated, implicating the husband of the murdered woman. Where these speculations and fabrications the work of a person seeking in this way to divert attention from himself? So far from this being the case, the speculations were thrown out as guesses, something in the way in which answers to conundrums are published; and nothing would better illustrate the falsity of the presumption now before us, as a general rule, than the laughter with which the whole community would greet an attempt to charge the author of one of these communications on the ground that throwing the police on a false track is a presumption of guilt on the part of those by whom the luring device is concocted. So far as concerns those who concocted fabrications implicating the husband of the murdered woman, we have here simply illustrated the fact that there may be gratuitous and volunteer perjuries for a prosecution, as well as gratuitous and volunteer perjuries for a defence. Men may perjure themselves for notoriety, or for merely the witness fees and allowances attendant on a summons to testify in a contested prosecution.

But we still have to consider the case of a person charged with crime taking actual part in the concoction of a false defence. But does this necessarily imply guilt? Mr. Bentham, in arguing in the negative, appeals to a well-known story in the *Arabian Nights*. A little hunchback is accidentally choked by swallowing a fish bone. His host, finding him dead, places him at the door of a neighbouring chamber. The inhabitant of this chamber, opening the door and finding this unwelcome encumbrance deposited there, gives the body a kick, and is shocked, on returning to the spot a few minutes after, to find the hunchback dead. To ward off suspicion from himself, he takes up the body and places it in front of chamber number two, where a similar scene is shortly afterwards enacted. Quite a number of operations of this kind are gone through with, each successive occupant endeavouring to shift, in this way, suspicion from himself on his