very good reason why he should not make the attempt, but a very poor one why he should lie. No one who would not deprive a prisoner of the right of self-defence, even by uttering a falsehood by way of plea, can consistently object to giving him the right of denying, explaining, or qualifying the charge as a witness.

The prisoner guilty, upon examination and cross-examination, may utter the truth. If so, justice is done. The great object of judicial proceedings is accomplishment.

Suppose the prisoner answers falsely, it by no means follows that his false answers will be credited. But the possibility of false testimony is no reason for exclusion. To exclude a witness because he may lie, is to exclude all witnesses, because there is no one of whom the truth can be predicated with assured certainty against the pressure of all conceivable motives acting in a sinister direction. The exclusion presupposes guilt which the law does not presume,—and probable perjury to sustain such guilt—two crimes: one committed; the other to be committed by the very person whom the same law presumes guilty of no crime whatever.

To exclude for presumed guilt is to determine in advance and before hearing, and adversely to the prisoner, the question in issue. It is, when the question of guilt or innocence is on trial, to exclude for guilt before guilt is or can be ascertained. The presumption of innocence logically requires the admission of the innocent.

But guilt is no ground of exclusion. The law admits the avowed accomplice, expecting a pardon, his pardon dependent upon the delivery of inculpatory evidence against the prisoner, whose innocence is a presumption of law. Admitted guilt received and heard; presumed innocence refused a hearing. Crime then constitutes no reason for the exclusion of a witness. The real ground of exclusion is that he is a party to the record. So that the participant in crime is heard, while the presumedly innocent party to the record is rejected, and for that reason alone. But the mere fact that a man's name is on the docket of a court, is no very good reason why his testimony, when required for the purposes of justice, should for such cause be rejected. In civil cases it has been deemed insufficient; much more should it be in criminal cases.

So, too, the law looks with great suspicion upon hearsay evidence. In the case of hearsay, whether confessional or other, there are at least two, and there may be more, witnesses whose conjoint testimony, original or reported, serves as the foundation of judicial decision. When the percipient and narrating witness are united in one and the same person, if he speak the truth and be believed, he determines the cause. In hearsay the narrating witness is not the percipient or effective witness: he speaks or purports to speak from the narration of others, and those others are the efficient witnesses. When the alleged confessions of a prisoner are received, *the efficient testimony consists in the statements thus reported.* But these confessions may have been misunderstood in whole or in part from inattention, misrecollected from forgetfulness, or misreported from design. They may be indistinct and incomplete, embracing but a portion of the truth; and the omissions which interrogation would have supplied, may produce the sinister effect of falsehood. The sanction of an oath and the securities to trustworthiness, afforded by examination and cross-examination, are wanting. Yet this very evidence thus seen to be inferior in trustworthiness is received, while the party present in court is not permitted to correct the errors of the narrating witness, whether arising from inattention, misrecollection, or design, nor if the confessions were indistinct or incomplete to supply the deficiencies arising from such indistinctness or incompleteness, and that too when under oath and subject to examination and cross-examination.

The securities against testimonial falsehood are the sanctions of religion, examination and cross-examination, and the fear of temporal punishment. These are all wanting in confessions, *as against the person whose confessions are offered to his prejudice.* They are attainable, and attained in all their strength, if the prisoner is examined.

The result is, that the *prisoner would be a witness in both cases.* In the one case without any of the securities for testimonial trustworthiness, *he testifies through the lips of the narrating witness by whom his confessional utterances are reported.* In the other case, when his testimony would be delivered under all the recognised safeguards against falsehood, it is rejected. Without any securities against falsehood, incompleteness, or indistinctness, the party is a witness; with every one attainable in their utmost efficiency he is excluded. Testimony recognised as inferior in every essential of trustworthiness is received, while the best evidence—the direct statements of the party under oath and subject to examination and cross-examination, are rejected.

The accused may lie, and the jury may be deceived thereby. While there is no witness whose statements may not be false, so there is no witness to whose statements, true or false, it can be made certain in advance that the just degree of credence will be given by the jury.

But what is the danger of deception? The prisoner is a witness at his own instance. Does he answer evasively, or, being cross-examined, does he refuse to answer? Silence may be equivalent to confession; evasion indicates that a true answer would endanger the person interrogated. Is the witness false in all his statements? Each particular falsehood endangers; the more numerous the falsehoods the greater the chance of detection and disproof. Is the answer partly true and partly false? Each truth is in eternal warfare with the accompanying lie. Truth and falsehood have no greater fellowship than has new wine