

PRESUMPTIONS IN CRIMINAL CASES.

the operation of this delusion we have had several illustrations in forensic investigations, "Who did you see at the bank at the time?" is a question asked a witness on a prosecution against a bank clerk for embezzlement. "I saw A, B and C, at their respective posts." Now it turns out that A was not at the bank on the particular day, and the testimony of the witness is impeached on the ground, "*falsus in uno, falsus in omnibus*." Yet the witness testified only what he really believed; and what is more, it is impossible for us to scan any long piece of testimony descriptive of a particular scene without finding in it one or more similar cases of filling in of details. In other words, when we recall an incident, we recall its usual conditions. In this way we can explain some of the conflicts as to identity. A, half awake, hears a noise like that of a burglar at an outside door. B, a suspected burglar, is known to be prowling about the neighbourhood, and on looking out of the window, amid shifting shadows, or perhaps in the person of a visitor haunting covertly, though not burglariously, the kitchen, A imagines he sees B. B's friends, however, are accustomed to see him in a particular alehouse at this hour, in which he is as much of an institution as the chair on which he sits. Some one of them looks in at the door at the usual hour, sees the group collected, and fills it up with its usual ingredients. Both A's testimony and that of the looker-in at the ale-house, turn out to be untrue. B was neither at the house of A, at the time, nor was he at the ale-house. Yet both witnesses testified only to what was an honest belief.

2. *There may be wilful perjury.* In some relationships, to certain classes of minds, perjury may be what Bacon called revenge, a sort of wild justice. Two years ago, the *London Quarterly Review*, a journal not among those distinguished for an advocacy of loose morals, when reviewing Lord Melbourne's life, and on commenting on Lord Melbourne's repeated assertions of Mrs. Norton's innocence of the criminal relations to him with which she was charged, told us that "according to the received code of honour when a lady's reputation is concerned," she is to be sworn out of difficulty by her paramour;

and we are elsewhere told that it is as much a part of the profession of a man of gallantry to perjure himself in court in order to get rid of the consequences of a seduction, as it is to perjure himself to his victim in order that the seduction may be accomplished. And in the *Quarterly Review* such oaths are likened to that of "the loyal servant, who, in 1716, when twitted with having sworn falsely to save Stirling of Kerr's life, said he would rather trust his soul with God than his master's life with the Whigs." If we should judge from some of the recent English election cases, we might conclude that this preference still continues, and that the reluctance to trust a master's soul to Tories is as great as is the reluctance to trust a master's soul to Whigs. Bribery disqualifies; bribery is an indictable offence; bribery is shown to have been lavishly employed; but the agent who employs it is a Mr. Smith or a Mr. Jones, who never was heard of before or after the election, whom nobody on either side employed, and whom nobody on either side knew. And in our own inquiries into questions of bribery, the identity of the persons bribing is either clothed in the same mystery, or, when certain persons are identified as being concerned in the illegal act, these persons uniformly swear they know nothing about it. So generally is this the case that it is now recognised that no case of bribery can be proved, unless (1) by some one of the parties having some great pecuniary or political inducement to disgrace his associates; (2) by some innocent bystander fortuitously hearing part of the transaction; or (3) by extrinsic facts from which a case of guilt can be inferred. Nor is it in election transactions, or partisan strifes, or adulteries, alone, that there is this temptation to perjury. There is no imaginable attitude in which a witness can be placed in which he is not more or less tempted to testify to that which is false.

Are we, however—such is the natural inquiry which presents itself—to reject all testimony as tainted, and fall back upon a sort of legal agnosticism? By no means. The conclusion, indeed, is that there is no fact that can be demonstra-