

Making Epicurean Canonics Understandable

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706 CONVICTION UPON CIRCUMSTANTIAL EVIDENCE.

In the trial of capital cases there are two time-honored maxims which have always obtained. (1.) That *circumstantial evidence falls short of positive proof*: (2.) That *it is better that ten guilty persons should escape than one innocent person should suffer*. The first qualified by no restriction or limitation is not altogether true. For the conclusion that results from a concurrence of well authenticated circumstances, is always more to be depended upon than what is called positive proof in criminal matters, if unconfirmed by circumstances, i. e., the oath of a single witness, who, after all, may be influenced by prejudice, or mistaken; and if by the word "better," in the second maxim, is meant more conducive to general utility, it would also seem to be unsound. And here we may endeavor to ascertain clearly what is understood in legal parlance by "circumstantial evidence." It may be observed that, every conclusion of the judgment, whatever may be its subject, is the result of evidence, a word which (derived from words in the dead languages signifying "to see," "to know,") by a natural sequence is applied to denote the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; circumstantial evidence is of a nature identical with direct evidence, the distinction being, that by direct evidence is intended evidence which applies directly to the fact which forms the subject of inquiry, the *factum probandum*: circumstantial evidence is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to or usually connected with some other fact as

is closely analogous in that sometimes the same sense (i.e, when

its accident, and from which such other fact is inferred. Upon this general definition jurists substantially agree. For an illustration, then, of direct and indirect evidence, let us take a simple example. A witness deposes that he saw A. inflict a wound on B., from which cause B. instantly died; this is a case of direct evidence. C. dies of poison, D. is proved to have had malice against him, and to have purchased poison wrapped in a particular paper, which paper is found in a secret drawer of D., but the poison gone. The evidence of these facts is direct, the facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed and whether it was committed by D. The judgment in such a case is essentially deductive and inferential. A distinguished statesman and orator (Burke's Works, vol. II., p. 624), has advanced the unqualified

That comes from [this](#) article.