

should to a moral certainty exclude every hypothesis but the one proposed to be proved." (1 Starkie 5-11, 5-12.) Lastly, "Circumstantial evidence ought in no case to be relied on, where direct and positive testimony is within the power of the prosecution." (1 Starkie 5-13.)

Jurors, help me to try the circumstantial evidence in this cause by the tests of the law thus laid down. You perceive without any labor of thought that evidence which satisfactorily and certainly proves that one of three persons, A, B and C, did a murder, is inconclusive evidence, upon which A, B and C must all be acquitted. The chances are two to one that you will select the wrong man. It is equally plain that evidence is "inconclusive" which makes it certain that one of two men, A and B, committed the crime. In this case the chances are equal that you will select the wrong one. Now, the law most wisely forbids that any person shall be hung by chance. Probabilities are out of place here; they have no standing in court, on a trial for crime. Nothing but certainty will satisfy the law, or the conscience of a just juror. It chills the blood to think of the condemnation of a fellow-creature upon a guess, however shrewd. "In a case of life and death," said a supreme judge of Pennsylvania, "I dare not be ingenious." There must be certainty, nothing but certainty. We are not debating triangles, and of course I do not mean the certainty of the exact sciences, I do not mean mathematical certainty; but I mean moral certainty, the certainty which excludes possibilities and probabilities, the certainty which declares that if it be probably certain that a man is not guilty you must, for that very reason, acquit him. That is the law which you have sworn to administer; and that ought to be law on the most elevated principle of justice, for otherwise it is as demonstrable as any proposition in mathematics, that you must hang the innocent; you can't avoid the error, you must shed blood which you have no right to spill. If under our law the innocent shall suffer, it must be the result not of the system, but of human fallibility.

Who killed Gordon? I ask you under the circumstantial evidence the State has brought. Who killed Gordon? Do