

but it is whether every other hypothesis is actually excluded, excluded to a moral certainty. That is the question! That is the question! And the enlightened conscience of every juror must answer it as he would answer it if the life of his own child hung upon the answer.

And how are you to answer it, gentlemen! The "how" brings to light the incurable defect, the inherent vice of circumstantial evidence. You are to reason out an unknown transaction; you are to find out by the eye of the mind what could not be seen by the actual eye. You are to look at a place you never saw (the scene of a tragedy), fix the *dramatis personæ*, and assign to each actor his part. You are to arrange the incidents in the actual order of occurrence, bring each actor on the stage at the right moment of time, and determine infallibly the words, gestures and action of each. You are especially to avoid a mistake of identity or change of cast. But your difficulty does not end here. You reason on what you have heard; but you must imagine also! You must task your intellect by running over the possible and almost infinite combination of circumstances in search of some other hypothesis which might explain all you know. You are to do what the Siamese king no doubt honestly tried to do, before he told the Dutch ambassador he was a liar; that is, hunt up some possible law of nature which would make water hard enough to bear an elephant. You are to invoke your creative power, your faculty of invention to see if every supposition is excluded, except that which the prosecution makes, to explain the circumstances detailed in evidence. If you should not happen to think of something which might account for all you have heard, if it should escape the counsel, the single counsel for the defense, the prosecution asks the life of the prisoner for our failure! And now you see also how fatal feeling and prejudice against him would be to the fair exercise of this power on your part. How such a state of mind would unfit you to hunt for another hypothesis than that which would condemn! Be assured, the prosecution will not aid you in this search. I may try, and fail; but neither their supineness nor my failure can discharge you from the