

you going to hang a man on your best solution? That is precisely what was done by the jury who murdered the innocent girl; by Jacob; by every jury and every man that ever erred, fatally erred, on circumstantial evidence. It is this best, this plausible hypothesis that ever seduces and leads astray. I deny your power! The law is against it. The law will not act on the best, but the only hypothesis, if there be "worst," "better," "best," the law will not choose between them. If there be room for choice, there is no room for conviction. That is the fourth rule. But I do not stop at this one hypothesis which you cannot satisfactorily exclude—exclude to a moral certainty. I give you another.

It is entirely possible, from all the evidence in this cause, that one of the two shot Gordon intentionally and that the other knew nothing of the fact till he heard the report of the pistol. There is a hypothesis which no human reason can "exclude to a moral certainty." Do you ask me, what consequence this hypothesis brings? I answer: If you know who shot, you may act on that knowledge and hold the shooter responsible for his act. If you know who it was that did not shoot, and he afterwards committed larceny, by appropriating feloniously the property of the deceased, the law will punish him for larceny. If he afterwards aided and assisted the man who shot to escape, he is guilty as an accessory after the fact. But if you only know that it was one of two who shot, there can be no conviction of either for murder; for, as I said, the chances are equal that you would select the wrong man; and therefore the law will not permit you to select at all. May not a murder thus go unpunished? Yes! Certainly, that is the result, and that ought to be the result, unless you are prepared to commit the more awful crime of judicial murder! That a man should lose his life by violence is a great calamity. Individual murder springing from unlicensed passions, horrible as it is, can never appall the mind as does the deeper tragedy of murder done in court. In the latter case the entire framework of society is shaken. The universal sense of insecurity arising from the proof that innocence is no shield, and government no protection! It is