

a case in which government itself fails in the end and object for which it alone was created—it is the “*immedicable vulnus*” of a State.

You will remember, jurors, that the law does not require proof of these hypotheses. On the contrary, the law depends upon the principle that they must be excluded, excluded to a moral certainty by proof. They furnish a defense upon the bare suggestion of them, by showing that the evidence, the circumstantial evidence, of the State does not come up to the standard of the law.

The last rule I read in your hearing establishes the inferiority of circumstantial evidence generally, by declaring in no case ought it to be relied on if direct and positive evidence be within the reach of the prosecution. Let me further show its fallibility by supposing a case of direct and positive evidence. A man near the road in the thicket, or within the enclosure of Mrs. Stevenson’s, looks upon the scene. He has a full view of Gordon and Bruff and Worrell, and brings every incident into this court in the order of its happening; the report of the pistol, the fall of Gordon, the hiding of the body, the departure. In a word, he tells you what did transpire, as it transpired, who shot, whether accidentally or intentionally, and what followed. If his relation showed guilt it would show what guilt, and in whom. You would not in such case have to grope your way by the guide of a most fallible and erring reason, to the unseen and unknown truth; nor call upon your imagination to say might it not have been thus, or so? You would be cut off from the dangerous exercise of speculation and conjecture. The only question would be credibility. Faith in the witness would be the only exercise of the mind. Is he honest, is he able? would be the only inquiries. If he were not able, the confusion of his narrative would show it. If he were corrupt, a cross-examination would lay bare his perjury. I would defy any perjured witness to give a false detail of that scene without detection. Yes, gentlemen, cross-examination in your presence, with moral power of the eye, can bring to the surface a perjury hidden in the heart of a false witness. But we have no remedy for the