

tion. *Quod dubitas ne feceris*; where you are doubtful never act; that is, if you doubt of the prisoner's guilt, never declare him guilty; this is always the rule, especially in cases of life. Another rule from the same author is, that in some cases presumptive evidence goes so far as to prove a person guilty, though there is no express proof of the fact to have been committed by him; but then it must be very warily pressed, for it is better five guilty persons should escape unpunished, than that one innocent person should die.

The next authority shall be from another judge, of equal character, considering the age wherein he lived; that is Chancellor Fortescue, writing in praise of the laws of England. This is a very ancient writer on the English law. His words are: "Indeed, one would rather, much rather, that twenty guilty persons escape the punishment of death, than one innocent person be condemned, and suffer capitally." Lord Chief Justice Hale says, it is better that five guilty persons escape, than one innocent person suffer. Lord Chancellor Fortescue, you see, carries the matter farther, and says, indeed one had rather, much rather, that twenty guilty persons should escape, than one innocent person suffer capitally. Indeed, this rule is not peculiar to the English law; there never was a system of laws in the world, in which this rule did not prevail; it prevailed in the ancient Roman law, and, which is more remarkable, it prevails in the modern Roman law; even the judges in the courts of inquisition, who, with racks, burnings and scourges, examine criminals, even there, they preserve it as a maxim, that it is better the guilty should escape punishment than the innocent suffer: *Satius esse nocentem absolvi quam insentem damnari*. This is the temper we ought to set out with, and these the rules we are to be governed by. And I shall take it for granted, as a first principle, that the eight prisoners at the bar had better be all acquitted, though we should admit them all to be guilty, than that any one of them should by your verdict be found guilty, being innocent.