

Many things, said JUDGE STORY, had been brought into the present case which he regretted; but the counsel for the defense had undoubtedly done right in omitting nothing that might have occurred to their minds as likely to be of benefit to the prisoners. The jury had had many cases read to them, to show the difficulty of deciding upon the identity of individuals. Some of these might be founded in fact, or they might, for aught any one could say to the contrary, be figments of the brain. They were the common-places of the law, and had been cited before him for the same purposes as now, in almost every criminal trial in which he had been engaged. If they went for any thing, they went to establish two things, viz.: first, that unless the body were found there ought to be no conviction; second, that, because men had testified falsely, or had been mistaken as to identity, that therefore testimony ought not to be taken. Now these positions were absurd. If no conviction ought to take place unless the body of a murdered person be found, what was to be done in cases of murder at sea, where the body was thrown overboard and buried beneath the broad ocean?

The cases of murder were numerous, and were they to be told that a jury had no right to convict, because the body could not be produced from the depths of the sea? Men had been convicted on false testimony; and what then? Are we to say that jurors shall never convict, because men have been found base and wicked enough to perjure themselves, for the purpose of taking away the life of a fellow being? No one, surely, will contend for doctrines of this kind. If they were admitted, our courts would be useless, not only in criminal but civil cases, and instead of being here today, the law ought to prescribe that there should be no courts, no administration of justice throughout our country. Human testimony is almost the only thing upon which we can rely in this world; and he who undertakes to shake our faith in it, undertakes to shake our faith in every thing on earth, and I had almost said, in heaven. Where would be the consolations of Christianity, which are based on human testimony? How