

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which would otherwise be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him. (Stephens case, 81 Ga. 589).

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the State is