Statement of the case.

proceedings remanded, with directions to enter a judgment affirming the decision of the board of supervisors.

JUDGMENT ACCORDINGLY.

Mr. Justice DAVIS took no part in the decision of this case.

THOMPSON *v.* BOWIE.

On an issue as to whether certain promissory notes, dated on a particular day, were given for money lost at play and therefore void, it is not allowable to prove that the party giving them was intoxicated on the day of the date of the notes in suit, and that when intoxicated he had a propensity to game.

THOMPSON sued Bowie, in the Supreme Court for the District of Columbia, on three promissory notes for $1000, all dated on the 1st January, 1857, and all drawn payable to and indorsed by one Steer.

The defence was, that the notes were given for a gaming consideration, and were, therefore, void even in the hands of a *bonâ fide* holder, under the statute of 9th Anne, ch. 14, § 1, in force in the district;* which statute makes such notes "utterly void, frustrate, and of none effect, to all intents and purposes whatsoever."

The defendant did not offer any direct evidence tending to establish the defence; but resorted to and relied on proof of a circumstantial sort, or such as he so regarded. It consisted of the following facts, tending to prove which the court below allowed evidence to be given.

1st. That Steer, the payee of the notes, was the keeper of a gambling-house, in Washington City, at the date of the notes.

2d. That, at the time of the making of the notes, Steer

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* See Kilty's Report of Statutes, p. 248.

was not engaged in any other business than gambling, nor was he the owner of any property.

3d. That another note of the defendant, of the same date (January 1st, 1857), as those sued on, of the same amount ($1000), as those sued on, was given, payable to the order of one Campbell, who was not only a frequenter of the gaming-house of Steer, but also in his employment as a dealer of faro.

4th. That the body of all four of said notes was in the handwriting of one J. R. James, who was a professional gambler, and a frequenter, among other such places, of the gambling-house of the said Steer.

5th. That on the night of the 31st of December, 1856 (New-Year's eve), the defendant, being at a social entertainment, became greatly intoxicated—so much so that he was unfit to transact any business; and that he was in that condition when with the witnesses he left the place of the entertainment, between one and two o'clock in the morning of the 1st of January, 1857, and was no more seen by them that day.

6th. That whenever the defendant was under the influence or excitement of wine or spirits, he had a propensity to gamble; and was in the habit of going into gambling-houses, faro banks, &c., and there gambling, but not at other times; that, in the knowledge of the witness, he was always in this condition when he frequented such places; that the witness was a great deal with the defendant during the sessions of Congress; that he was in the witness's room almost every night, and frequently, when in liquor, would leave the witness to go with his friends to gambling-houses, and request the witness to go with him.

7th. That, at the date of the notes, the defendant was wealthy.

On this testimony, and without the plaintiff endeavoring to rebut this case, or to show in what manner he obtained possession of the notes, the case was given to the jury, who rendered a verdict in favor of the defendant.

On error here, one question among others, and the chief

question, was as to the admissibility of the evidence tending to show, that when the defendant was under the excitement of ardent spirits he had a propensity to game; was in the habit of going into gaming-houses, &c., and of there gaming, but not at other times; and that, in the knowledge of the witness, he was always in this condition when he frequented such places.

Messrs. Brent and Merrick, for the holder of the notes, plaintiff in error:

In addition to numerous errors of the court, there was palpable error in its admitting the evidence to show that when the defendant was under the excitement of ardent spirits he was in the habit of going to gaming-houses, and, so far as the witness knew, was always in this condition when he went there. The testimony simply tended to prove a *propensity;* a propensity to game. Now, such a propensity, even if admitted, did not tend to prove that the notes sued on were given for a gaming debt. If A. has his money stolen, assuredly he could not recover it from B. by proving that B. had a propensity to steal. *Jackson* v. *Smith*,* in the Supreme Court of New York is in point. There, a man named Norris was in the habit of lending money at usurious rates of interest; and the court considered it "altogether probable" that a loan in question "was a loan of that description." They held, however, that "the fact of Norris's general character or habit as a usurer" was not "a legal foundation" for a verdict which found a particular transaction, not otherwise proved so to be, usurious.

Messrs. W. S. Cox and S. L. Phillips, contra:

Three notes of a wealthy gentleman, all of the same date, in the same handwriting, for a like amount, and of a regular series of thirty, sixty, and ninety days, given at one time and in the same transaction, are found payable to a professional gambler at a time when he is a keeper of a public

* 7 Cowen, 719.

gaming-house, and has no other ostensible business, and a man of no property with which he might engage in lawful commerce. The body of each of these notes was in the handwriting of one J. R. James, a professional gambler and frequenter of the gaming-house of the said payee; and a fourth of the same series and like handwriting as the others, of the same date, and for the same amount, is found payable to the order of one Campbell, who was not only a frequenter of the gaming-house of the said Steer, but in his employment as a dealer of faro. We ask, is it not a fair inference from these facts that these notes had their origin in the gaming-house of the payee, and in the ordinary business which was carried on there? But these facts do not stand alone. Early in the morning of the very day the notes were given—New-Year's day, a day of festivity, and with many of excess—the defendant was in a grossly intoxicated state, and was no more seen by his friends that day; and we show that when intoxicated he exhibited an invariable habit of frequenting gaming-houses, a thing which he did at no other time.

The case presents, therefore, many circumstances, all interlacing and depending upon each other, and all pointing towards the same result; all reconcilable with the hypothesis of the defence, and improbable with any other. And we submit that each and every item of the evidence was admissible, including the one so particularly objected to.

This court has lately decided, in the two important cases of *Cliquot's Champagne* and *Fennerstein's Champagne*,* the same principle of establishing one fact by another, although occurring as between third parties. In those cases, it is submitted no such necessary connection appears as is to be found in this.

The main question, however, now more particularly raised is this: Does evidence of the invariable habit or propensity of the defendant to game when intoxicated, and of the fact of intoxication at a certain time, tend, in connection with

* 3 Wallace, 114; and Id. 145.

the other facts of this case, to prove a transaction of that date to have been the result of gaming? We submit that it does.

The foundation for the admission of all presumptive evidence is the known relation between like causes producing like effects; and wherever it is known that a certain cause usually produces the same effect, the rules of evidence admit either to prove the other.

It has been often decided by the courts in civil as well as criminal cases, that wherever a particular trait of character is involved, or is illustrative of the matter disputed, there the character of the party in that particular trait may be given in evidence.* Thus, honesty in cases of felony, peaceable disposition, or quarrelsomeness when drunk, in those of riot, &c., chastity in those of seduction and criminal conversation, &c., &c. By the admission of such testimony, the courts recognize the principle contended for,—that a man known to act usually in a certain manner, under certain circumstances, will be presumed to act in the same manner when shown to be subjected to the same circumstances.

We have called this impulsion to gaming a "propensity," but it is hardly doing justice to our case thus to style it.

The true question is this, rather; and in presenting it we trust that in this age of physiological science we shall not be thought to be dealing with the question in a manner too abstruse and not practical.

This, we say, is the true question: "Is the fact that an individual, who, when influenced by a certain and sufficient cause affecting his nervous organism to such an extent as to override or paralyze the judgment and will, has—in every instance where known to be so influenced—been found to act in a certain manner, admissible as evidence to show that on another occasion, when under the same exciting cause, he probably acted in the same manner?"

We submit that it is.

This law of universal causation is that which governs all

* McNabb v. Lockhart, 18 Georgia, 495; 1 Greenleaf on Evidence, § 54.

material organism, and is the great law upon which all human life is built. It exists with such a uniformity that all men accept it as the surest method of *à priori* judgment and courts of justice adopting its principle as a means of investigating truth, as soon as they find that an isolated fact is the result of a certain cause, admit the like circumstances as proof of similar effects. Now, what is the cause of the peculiar effect attempted to be proved in this case? What influence did the cause in this case, to wit, the taking of ardent spirits, have on the defendant, and how is this influence produced?

Man is essentially a corporeal or material being. His mind is either the result of material organization, consisting of nervous centres, or it is so intimately connected with them as to be incapable of exhibiting life or power when disconnected from them. And it is the universal experience of all physiologists that this connection is so intimate as to show that what affects the nerves immediately affects the phenomena of the mind.

Now, it is known in science, or more properly in *materia medica*, that there are certain things which directly affect these nervous centres of the body; chief among these are strychnia, and alcohol, and the opiates. These taken into the body at once produce visible and marked effects on the mind. The question then arises, are these effects uniform in their character? The great law of like causes producing like effects answers this question that they must be. When not altered by countervailing or repellent circumstances, the action of strychnia, of opium, or of alcohol on the corporeal frame, will be as unalterable and uniform in their character as the revolutions of the planets or the law of gravitation. And such is the general experience of human nature. It is common knowledge, that some men are invariably excited to laughter and hilarity when intoxicated, others to quarrelling, others with the same regularity to morose conduct; some to one particular line of conduct, and others to some other.

How this effect of alcohol, strychnia, or the opiates is pro-

duced is not known as a matter for certain. The investigations of scientific men have, however, discovered that when these substances are taken there is either, on the one hand, a paralysis partial or total of the nerves, or an undue stimulation into action, and which is so great that the influence of the *cerebrum*, where the willing power of man is located, is not able to control this excited condition of the nervous system. This influence is so great that in cases of alcoholic stimulation, or opiate paralysis, the judgment as well as the other powers are affected. When in this situation, the individual acts not as one in full possession of his will, but from *irresistible impulse which he cannot control*, and which physiologists have termed the reflex action of the nervous centres.

The manner in which these various substances affect the nerves is, however, not important to the inquiry, it is only important to show that taking alcohol into the system is matter acting on matter, and to such an extent as, either from an enfeebled or paralyzed will, to be no longer under its restraint or control. In other words, when an individual is deprived of his will and is at the same time acted upon by extraneous circumstances, he becomes no more than any other piece of matter, and the law of causation will apply with full force.

It is obvious, then, and in this view of the case, that such cases as *Jackson* v. *Smith*, the authorities cited on the other side, and all similar cases, as to the admission of the general character of a person, when it is not put in issue by the nature of the action, do not apply to this case.

In those cases it was not matter acting on matter, alcohol upon the nervous centres of the brain, but certain ideas of self-interest, morality, fear, or what not, acting on the will of the individual; and the courts say that when the question is not involved by the very nature of the action, the evidence is too uncertain to be relied upon, because it is impossible to tell with any certainty what were the causes or the motives influencing the will, and how far the will, it being an intellectual capacity, is acted upon by them.

The rule admitting presumptive evidence does not require that this connection between the two facts should be invariable and absolutely certain, but only that it should exist in a majority of cases, or so often as to warrant the court in saying that some reasonable inference might be drawn from it.

And for this reason it need not be shown that the defendant always gamed when intoxicated, for then the proof of intoxication would be proof positive of the gaming, but the fact that he usually gamed when intoxicated, and at no other time, is admissible to show the probability of the fact.

If the habit, or the influence of the ardent spirits on the defendant, was not established to the satisfaction of the jury, then it went for nothing. The court here must decide upon the offer, and if the offer was right in theory, it was for the jury alone to say if this condition of intoxication, on the occasion in question, or this influence of alcohol was established to their satisfaction.

Mr. Justice DAVIS delivered the opinion of the court.

Thompson brought suit in the court below to recover on three promissory notes, purporting to be given on the first day of January, 1857, by Bowie to Steer, and indorsed to him. Bowie sought to avoid their payment on the ground that they were founded on a gaming consideration, and therefore void, even in the hands of an indorsee, without notice, because the statute of 9th Anne, avoiding gambling contracts, was in force in the District of Columbia, where they were executed. There was no direct evidence offered on the trial to impeach the consideration of the notes; but what is called circumstantial evidence, in contradistinction to direct evidence, was relied on to prove the defence. A brother of the defendant was called by him, and allowed to testify; that whenever his brother was under the influence of liquor, he had a *propensity to gamble*, and it is contended, as he was drunk on the morning the notes were given, and as they were in the handwriting of a professional gambler, and payable to the keeper of a gaming-house, the inference

is fair and reasonable, that they were given for money won at play.

Did the court err in admitting this evidence?

If it did err in this matter, then the judgment must be reversed, for, undoubtedly, the jury, in the formation of their verdict, must have been greatly influenced by testimony that the general character or habit of Bowie was to gamble when intoxicated.

All evidence must have relevancy to the question in issue, and tend to prove it. If not a link in the chain of proof, it is not properly receivable. Could the habit of Bowie to gamble, when drunk, legally tend to prove that he *did* gamble on the day the notes were executed? The general character and habits of Bowie, were not fit subjects of inquiry in this suit for any purpose. The rules of law do not require the plaintiff to be prepared with proofs to meet such evidence. That Bowie gambled at other times, when in liquor, was surely no legal proof that because he was in liquor on the 1st day of January, 1857, he gambled with Steer. It is very rare that in civil suits the character of the party is admissible in evidence, and it is never permitted, unless the nature of the action involves or directly affects the general character of the party.* Bowie was not charged with fraud, or with any action involving moral turpitude. He was simply endeavoring to show that his own negotiable paper was given for money lost at play; and to allow him, as tending to prove this, to give in evidence his habit to gamble when drunk, would overturn all the rules established for the investigation of truth. When trying a prisoner on an indictment, for a particular crime, proof that he has a general disposition to commit the crime is never permitted.† If a man charged with the larceny of a horse was proved—in connection with other evidence tending to show his guilt—to be drunk on the day the horse was stolen, would any court allow the general evidence to go to the jury that,

* 1 Greenleaf's Ev., § 54.

† 1 Phillips on Evidence, p. 143; The State *v.* Field, 14 Maine, 249.

when drunk, he always stole a horse? And yet, the general rules of evidence are the same in civil as in criminal cases. "There is no difference," says Abbott, Justice,* "as to the rules of evidence between criminal and civil cases; what may be received in the one may be received in the other, and what is rejected in the one ought to be rejected in the other."

The uniform habit of a party to loan money at usurious interest, was not considered by the Supreme Court of New York a legal foundation for a verdict establishing usury, although one usurious loan had been proved between the parties to the suit, and it was altogether probable, that the case under review was of that description.† The uniform habit of Bowie, when drunk, to gamble is not a legal foundation for this verdict, although it is highly probable that the notes in controversy were executed by him for a gaming consideration.

There are other assignments of error, which it is unnecessary to notice, as the decision of this question disposes of the case.

The judgment of the court below is reversed, and mandate ordered, with instructions to award a

VENIRE DE NOVO.

Mr. Justice GRIER dissenting:

I cannot give my assent to the reversal of this judgment for the reason alleged in the opinion of the court, nor for any other.

The defence to the payment of these notes was that they were obtained by fraud from the defendant when he was drunk, and were without consideration and void.

Now, fraud will not be presumed but must be proved as other facts, either by direct proof or by circumstantial evidence which will convince the mind of a jury that a fraud

* Rex v. Watson, 2 Starkie, 155; Regina v. Murphy, 8 Carrington and Payne, 306.

† Jackson ex dem Norris v. Smith, 7 Cowen, 719.

was committed. It is seldom that a fraud or conspiracy to cheat can be proved in any other way than by circumstantial evidence, as knaves have usually sufficient cunning to have no witnesses present who can testify directly to their fraudulent contrivances. Circumstantial evidence is often as convincing to the mind as direct testimony, and often more so. A number of concurrent facts, like rays of the sun, all converging to the same centre, may throw not only a clear light but a burning conviction; a conviction of truth more infallible than the testimony even of two witnesses directly to a fact. A cord of sufficient strength to suspend a man may be formed of threads, not one of which, alone, would support the weight of a pound or even of an ounce.

When it becomes necessary for the purpose of justice to have resort to circumstantial evidence, it is the usual course of counsel to object to each thread because it will not support the whole weight of the case. Thus, if the defence be that a note was obtained by a combination of a band of gamblers and swindlers from a drunken man, as but one fact or circumstance can be proved at a time, the learned counsel will object to the offer to prove that the payee kept a gambling-house, and will gravely quote the decision of some learned judge, that a plea of usury cannot be substantiated by proof that the plaintiff had the character of being a usurer; so also that he executed four other notes at the same time to other notorious gamblers, &c. No one of these facts standing by itself would be received as evidence in defence. But the court received evidence of the following facts:

The defendant gave evidence, by several witnesses, tending to prove that Steer kept a gambling-house in Washington City at the time of the date of the said notes, and was not engaged in any other business to the knowledge of the witnesses, and had no property to their knowledge, and that the defendant was at a social entertainment on the night of the 31st of December, 1856, and became grossly intoxicated, so that, in the opinion of said witnesses, he was unfit to transact business, and that he remained in such condition

when he left the place of said entertainment with the other guests who were there, and that he left in such condition between one and two o'clock in the morning of the 1st of January, 1857, and also that the body of said notes was written in the handwriting of J. R. James, who not only frequented the gaming-house of the said Steer, but other gaming-houses; and then gave evidence to prove that said James was a gambler by profession. And the defendant then offered to prove that a note dated on the 1st January, 1857, for $1000, was given by the defendant, payable to Campbell, and indorsed by him, to one Johnson, and that Campbell was a frequenter of the said gaming-house, and assisted in dealing for the said Steer. And the plaintiff objected to the said note to Campbell being admitted in evidence, but the court overruled the objection and admitted the said note to be read in evidence. After the reception of this testimony, of which this court has found no fault, the defendant proposed to add another fact, to wit: "that when the defendant was under the influence of liquor he had a propensity to gamble."

This admission of evidence of a fact, of little consequence in the decision of the case, has been seized upon here and treated as the only fact in the case, and not a circumstance, which, unless connected with others, of itself formed no defence. Now if it was wholly irrelevant, it did no harm to either party. If it was a fact, which might influence the mind of a jury, why should it be withheld from them? In a charge of fraud courts have said, what is evidence to affect the mind of a jury is often difficult to decide or distinguish. But any fact, though in itself of slight importance, will not be withheld. In such cases it is not for the court to treat the jury as persons without discernment, where the issue is one purely of fact. Now there is not a fact stated as having been proved, taken by itself, as *per se* a defence to the action, which counsel might not with equal justice have treated as absurd or ridiculous. But if the court below had selected this fact from all the others as peculiarly liable to objection, their judgment might have been liable to the same charge.