Arthur Conan Doyle’s Critics of Circumstantial Evidence in His Detective Novel, The Boscombe Valley Mystery, and The Law of Circumstantial Evidence in Australia

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Introduction

If an evidence, by itself or in connection with others, gives reasonable direction to confirm or edify a concerned fact, then it can be regarded as ‘circumstantially relevant’\(^1\). In this sense, it is common in legal practice to apply circumstantial evidence to exclude potential alternatives\(^2\) to infer\(^3\) and to prove the existence or non-existence of a concerned fact\(^4\). However, as criticised by Arthur Conan Doyle in his novel, The Boscombe Valley Mystery, ‘circumstantial evidence is a very tricky thing. It may seem to point to one thing, but if you shift your own point of view a little, you may find it pointing in an equally uncompromising manner to something entirely different’\(^5\). According to Doyle, ‘there is nothing more deceptive than an obvious fact’\(^6\). This paper will examine these statements in the context of circumstantial evidence law in Australia.

In order to examine these statements in Australian circumstantial evidence law, it is crucial to have an overview of Doyle’s novel, The Boscombe Valley Mystery where the statements were invented by the author. The novel concerns the issue of a murder of a landowner in Boscombe Valley, Herefordshire, England. In the story, the landowner’s son was accused of murder of his father in the situation in which circumstantial evidence accumulated against him on the ground that: i/ at the time his father died in Boscombe Valley, two witnesses saw the son argued with the father in the woods in the valley; ii/ the cause of the father’s death was the wound on the his head which seemed to be caused by the striking of a blunt object similar to the son’s gun and; iii/ there was blood on the son’s shirt when he ran into the house of a lodge keeper in seeking for help. However, with the help of Holmes, the son’s innocence was successfully defended. It turned out that the actual murderer was a fellow friend of the father expatriated from Australia. The motive of the murder, as discovered by Holmes, was that the victim blackmailed his fellow friend for the robbery that the friend committed against the victim in the past, and the fellow friend did not want his

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\(^1\) Shepherd v The Queen (1990) 170 CLR 573 (‘Shepherd’).


\(^3\) Festa v The Queen [2003] WASCA 207, [12]-[14].

\(^4\) Martin v Osborne (1936) 55 CLR 367, 375 (‘Osbourne’).


\(^6\) Ibid.
daughter to marry the son of the victim. The significance of the story conveys the message that circumstantial evidence, if stands alone, may result in two opposite inferences: misleading, on one hand, or giving an appropriate direction to the process of cross examination, on the other hand. The reason is that the inference, as reasonably established by the jury on the ground of accumulated circumstantial evidence, still may be proved of being a deceptive interpretation of the facts in issue.\(^7\)

Therefore, it may make sense to examine this argument implied by Doyle in the context of circumstantial evidence law in Australia on the basis of: standard of proof, cumulative effects of circumstantial evidence, character evidence, and similar-fact evidence.

I. **Standard of proof**

Circumstantial evidence rationally and truly asserts or infers the existence of a fact if, as explained by Dixon J in *Osbourne*\(^8\), no other reasonable different explanations could be deduced from circumstantial evidence.\(^9\) His Honour went further in elaborating that the probability of an act is relevant to the circumstances in which it occurred, and therefore, by employing ‘*common experience*’, it could exclude the existence of other probabilities on the ground that it is unreasonable for ‘the fact to be proved’ and other different probabilities to exist at the same time.\(^10\)

However, following Doyle’s critics of circumstantial evidence, the argument by His Honour seems not to satisfy in eliminating the possibility that ‘the fact to be proved’\(^11\) could be a mistake, regardless how ‘high’\(^12\) the ‘degree of its probability’\(^13\) could be. It is always deficient, on the ground of exclusion itself and in the standard of proof, to make the connection of circumstantial evidence regarding a person’s moral inclination, reputation, and relationships to the alleged offence to infer a probability as a conclusion that the fact to be proved truly exists on the ground of relevance, even though, the conclusion is seemingly most possible.\(^14\) What Doyle pointed out here is obvious, if the judgement on the defendant’s morality changes from one person to another, the relevance of the defendant’s reputation to the fact to be proved seems to carry less weight. For instance, one person could say that the defendant was of good characters in contrast to many other persons who judged the defendant as morally inclination to violence. Hence, on the ground of accumulated circumstantial evidence, there always exists the chance, though small, that a person is wrongly convicted of a violence offence. As such, as informed by Doyle’s statements, what really deceits human’s common knowledge is to take the seemingly highest probability as a

\(^{7}\) Ibid.

\(^{8}\) *Osbourne* (1936) 55 CLR 367.

\(^{9}\) Ibid 375.

\(^{10}\) Ibid.

\(^{11}\) Ibid.

\(^{12}\) Ibid.

\(^{13}\) Ibid.

\(^{14}\) Ibid.
conclusion beyond reasonable doubt. In this regard, it is observable that the seemingly obvious facts inferred from circumstantial evidence may be deceptive because, as considered by Doyle, they could vary greatly in nature for the reason that different mindset of each person will interpret the evidence in a different way. For instance, as illustrated by Doyle, when a man shaves his facial hair, the result of this act could be differently observed by his own and by other persons looking from different angles. The more he get to the corner of his jaw, the more difficult for him to shave his hair, and as a result, he may see his facial skin clean and bright in the mirror after shave, but if someone look at his jaw from a different angle, the result of the observation may not be the same.

In another case, *Plomp v R*17, Dixon CJ reached a verdict of murder after examining the involved circumstantial evidence.18 He concluded beyond reasonable doubt that the defendant had deliberately caused his wife’s drowning on the ground that he had been in a relationship ‘with another woman to whom he proposed to marry’19 and ‘presented himself as a widower’20. Furthermore, His Honour argued that the defendant wife was a good swimmer, and thus, it is not easy for her to get drowned without impediment by someone in the process of regaining her breath.21 Though the evidence to infer the conviction in this case may be considered as relevant, it is arguably indirect and very remote, and in addition, there may still exists other inferences may support the defendant’s innocence. It is possible that the defendant was the culprit, but it is also possible to apply Doyle’s statements to reasonably argued that the victim was having an involuntary muscular contraction, and thus, lost her capacity to swim, making the probability that the defendant wilfully murdered his wife less probable. Similarly, in the case of *Wilson v R*22, Barwick CJ admitted the evidence of unhappy relationship and arguments between the defendant and his wife until the wife’s death. His Honour reached the conclusion that the defendant killed his wife by reasoning that the unhappy relationship may serve as relevant circumstantial evidence which can be used to ‘logically and reasonably’ deduce the defendant’s murder of his wife.23 The defendant was ‘quarrelling’ with his wife at the time of her death, and thus, no remoteness in time24 was presented. His Honour excluded the defendant’s argument for an ‘accidental shooting’ because ‘it lacked credibility’ on the same circumstantial evidence which is the hostility between

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15 Above n 5.
16 Above n 5.
17 *Plomp v R* (1963) 110 CLR 234.
18 Ibid 242.
19 Ibid.
20 Ibid.
21 Ibid.
23 Ibid [3]-[7].
24 Ibid; *R v Tsingopoulos* [1964] VR 676.
the defendant and his wife.\textsuperscript{25} However, by applying the reasoning by Doyle, it is possible to shift to the view that not all bad relationships and quarrels necessarily lead to the act of murdering a spouse. Thus, there might not be a remoteness in time when the wife died, but there was still a possible remoteness in the cause of death. This shift of view on the circumstantial evidence could infer an innocent explanation on a reasonable observation that not all husbands will kill their wives only as a result of a quarrelling history with their wives, and therefore, as implied in Doyle’s statements, an accidental shooting could be a reasonable inference. In other words, the quarrel and unhappy nature of a relationship could hardly be the cause that make the defendant angry to the extent of killing his wife. It is commonly observable in the real life that though many couples have gone through quarrels and bad relationships in a long period of time, they still have deep feeling for each other and still trying to keep maintaining and improving the relationships. In convergence with Doyle’s implication that it needs to examine circumstantial evidence in relation to the whole evidence to avoid misleading effects caused by circumstantial evidence, the Court in Baden-Clay\textsuperscript{26} held that the Court of Appeal did not take into account all circumstances of the case in re-establishing the jury’s conviction of the defendant’s murder of his wife\textsuperscript{27}.

II. Cumulative effect of circumstantial evidence

Circumstantial evidence, in its combining effect, could be used to prove a fact. Thus, if one element of this combined effect is broken, the whole argument to prove a fact will crumble. However, the requirement that every basic criterion of a crime needs to be proved beyond reasonable doubt, as explained by Dawson J in Shepherd v R\textsuperscript{28}, does not signify or imply the requirement for every fact, or every link in a chain of evidence, upon which an inference is drawn, to be proved beyond reasonable doubt\textsuperscript{29}. In this sense, circumstantial evidence has a cumulative effect that needs to be comprehended in the relationship with the whole evidence\textsuperscript{30}. The probative value of circumstantial evidence will not exist if each fact has its probability of occurrence examined separately\textsuperscript{31}. His Honour argued that intent of a suspect, as a basic element in every crime, needs to be inferred from the combination of all circumstantial evidence without the necessary to refer to whether each link in the whole evidence actually existed or occurred\textsuperscript{32}. Considering this issue from Doyle’s viewpoint, it is apparent that ‘circumstantial evidence is tricky’\textsuperscript{33} because the inference drawn from them are varied in legal nature and essence of truth, depending on the mind of each
member of the jury. Following Doyle’s implication, it could be argued that it is prejudicial to the defendant by reaching a conclusion of guilt that depends on the shifting nature of human’s mind under possible emotional tactic of a prosecution. Following the suggestion in Chamberlain, His Honour pointed out that the jury is not responsible for determining the validity of each piece of evidence, but rather inferring from the whole evidence a conclusion of fact as an ‘immediate step’ before the final ‘conclusion must be proved beyond reasonable doubt’. The judge will consider the nature and circumstances of each case to decide whether it is necessary to address the conclusion for the purpose of instructing the jury that the ‘jury’s conclusion needs to be proved beyond reasonable doubt’. However, in the cases in which the jury needs to arrive at a conclusion in complying with criminal standard of proof following the judges’ instruction, other possible alternative explanation that could give rise to doubt about the existence of the fact concluded by the jury. Doyle’s critics of circumstantial evidence could lead to a position that if criminal standard of proof does not require that every piece of evidence to be proved beyond reasonable doubt, then circumstantial evidence will suggest totally different explanations, given the slightest change in the jury’s mind. At this point, Doyle pointed out that circumstantial evidence is like window on the right hand side of a person’s bedroom where the person wakes up every day to acknowledge this fact, however, this fact could not be perceived as self-evidence from the perspective of another person whose bedroom’s window is located on the other side.

### III. Character evidence

Character evidence, or propensity evidence, is circumstantial evidence which discloses a person’s particular tendency of thinking, behaving, or acting. Character evidence may reveal a person’s mental attributes, such as honesty and moral belief. Though having probative values, character evidence may impose much prejudice on defendant. A criminal past may indicate the likeliness of a person to commit the same crime again, however, it is necessary to reach a conclusion of guilt by relying upon both circumstantial and direct evidence involved in an event. Therefore, as considered by Dixon CJ in Dawson v R, the conclusion of guilt should not be deduced from moral attributes and behavioural tendency of a defendant. In this sense, His Honour seems to agree with Doyle’s implication that it is not convincing to reach a conclusion of guilt of a crime only by inferring from the defendant’s history of committing similar crimes. Sections 15(2) of QLD

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35 Shepherd (1990) 170 CLR 573, [14]-[15].
36 Ibid.
37 Above n 5.
38 Ibid.
39 Dawson v R (1961) 106 CLR 1(‘Dawson’).
40 Ibid [14].
41 Ibid.
Evidence Act 1977 does not allow to ask and does not require a person to answer questions that purport to expose the person’s bad characters or prior conviction of a crime, unless the court permits to ask such questions in order to establish admissible evidence proving the person’s innocence or the guilty of the offence, and unless the person has given evidence to support his good characters or against the prosecutor, the prosecutor’s witness, and anyone in the proceeding. The Court’s permission need to be applied for ‘in the absence of the jury’. Section 16 of the QLD Evidence Act 1977, as subject to section 15, allows a party to prove the existence of the previous conviction that the questioned party denied or declined to answer questions regarding such conviction. At this point, Wilson, Mason, Dawson, and Brennan JJ, in Phillips v R, in considering the situation in R v Cook and with the approval in Matusevich, seems to acknowledge the implication regarding the effects of mind shifting and alternative inferences by Doyle that prejudice imposed upon the defendant by this type of question has the same effect of imputations caused by the defendant upon the Crown. In this case, the Court suggested that it is unreasonable to assume that the test in O’Keefe may perform with the same effects with the test applied in Pfenning. The test in Pfenning is more appropriate in this case because, similar to Doyle’s critics of circumstantial evidence, the Pfenning test did not view similar-fact evidence as the only ground to prove the defence’s guilt of the offence, but rather allow the court to deny the admission of the evidence if the evidence may establish the defendant’s innocence. Hence, it is noticeable that, following section 15(2) of QLD Evidence Act, His Honours determined the Court’s exercise of statutory discretion as a principle to ensure fairness for all involved parties in particular circumstances, as established in Curwood and affirmed in Dawson. It could be the witnesses’ memory that needed to be examined, and not the witnesses’ honesty, and therefore, if a party has to bear any unfairness in the process of cross examination by the Court’s denial or allowance to
ask this type of question, prejudice may arise regardless how honesty could be taken into account\textsuperscript{61}. In this regard, Willes J, in \textit{Attwood v R}\textsuperscript{62}, seemed to agree with Doyle that ‘more men may be wrongly hanged’\textsuperscript{63} by the admission of circumstantial evidence, even the slighter ones, on the ground that, on one hand, this type of evidence may help to establish a just conclusion in one case, it may lead to injustice in ninety nine other cases, on the other hand.\textsuperscript{64} In this sense, evidence of ‘bad characters’ may be excluded to avoid prejudice imposed on the accused, not to establish proof of guilt or to respond to evidence advanced for good characters of the accused.\textsuperscript{65} As such, it is essential to cross examine a witness’s parti pris and capacity to hear, see, and memorize to answer as to whether the witness’s testimony is creditable, and it does not necessarily lead to a speculation about the accused’s characters\textsuperscript{66}. However, as contrary to Willes J’s ground of ‘policy and humanity’\textsuperscript{67} and Doyle’s critics of circumstantial evidence, the cost to exclude circumstantial evidence of the accused’s bad characters may have to be paid for by accepting the risk that a person’s bad characters may make the person to be likely to give untrustworthy testimonies.\textsuperscript{68}

In the situation where prior minor offences had been committed a long time ago, cross examination about such offences would establish ‘minimal weight’ to infer a conclusion of guilt, and thus, should be denied to avoid ‘potential prejudice’.\textsuperscript{69} This situation is exemplified in \textit{R v Salmon}\textsuperscript{70} where McMurdo P considered the evidence of the defendant’s previous conviction as wrongly admitted on the ground that the offence was only a minor one that happened 16 years ago, and in addition, the counsel had failed to apply for the Court’s permission to lead such evidence under s 15 of the QLD Evidence Act 1977\textsuperscript{71}. However, regardless whether the evidence was admitted, the conclusion for the defendant’s murder would be still valid if the Court reached the conclusion with no ‘substantial miscarriage of justice’\textsuperscript{72}. However, if considering the issue from Doyle’s view, it is arguable that it has no established standards to measure the degree of miscarriage of justice or to answer the question as to whether a miscarriage of justice may be substantial, taking into account the prejudice effects of the wrongly admitted evidence and the fact that the term ‘
\textit{substantial miscarriage of justice}’\textsuperscript{73} may change its meaning with a variety of different interpretations.

\begin{footnotesize}
\begin{enumerate}
\item Ibid.
\item \textit{Attwood v R} (1960) 102 CLR 353 (‘\textit{Attwood}’).
\item Above n 5.
\item \textit{Attwood} (1960) 102 CLR 353, 8.
\item Ibid.
\item Ibid.
\item Ibid.
\item Ibid.
\item \textit{R v Salmon and James} [2003] QCA 17, [47]-[49] (‘\textit{Salmon}’).
\item Ibid.
\item \textit{Evidence Act 1977} (Qld) s 15.
\item \textit{Salmon} [2003] QCA 17, [50]-[56].
\item Ibid.
\end{enumerate}
\end{footnotesize}
Nevertheless, McMurdo P, in his discretion in considering the circumstances, held that the wrongful admission of evidence did not keep the defendant from having an acquittal opportunity.\(^{74}\)

In regarding to character evidence, section 4 of the Qld Criminal Law (Sexual Offences) Act 1978\(^ {75}\) provides several rules to examine witnesses in cases of sexual and non-sexual offences against the accused. The section stipulates that the Court will not allow evidence or questions concerning the complainant’s chastity. Cross examination and evidence relating to the complainant’s sexual activities will not be permitted unless the evidence constitutes relevance substantial to the concerned issue, and as to establish credit, the evidence is an appropriate matter to be examined. Another exception to this rule is that under the circumstances where the complainant’s reliability could be damaged and her confidence is impaired by being regarded as less worthy just because of her sexual activities. As such, inference from evidence about complainant’s sexual activities does not have any effect in establishing the relevance of the evidence to the concerned facts. Following Doyle’s critics of circumstantial evidence, it is prejudice in nature to construe that a person who works as a sex worker will be more likely to give consent to having sex with the accused in the concerned sexual offence. Evidence of an event occurring at the same time or as a part the offences committed by the defendant will be deemed as substantially relevant to the facts in issues. Cross examination and evidence concerning the complainant’s sexual activities need to have leave granted by the court by application in the absence of the jury, and the court will exercise discretion to examine the evidence’s necessary to decide as to whether to allow or deny the application in the absence of the jury.\(^ {76}\)

### IV. Similar fact evidence, its probative values and prejudicial effects

Probative values of circumstantial evidence need to be weighed against its prejudicial effects under the Court’s discretion.\(^ {77}\) Doyle’s mentioned statements may express the implication that circumstantial evidence may establish unnecessary and ‘undue impact’ on the jury if the inference were limited to probative explanations offered by such circumstantial evidence\(^ {78}\). Therefore, it is crucial to examine the ‘degree of cogency’\(^ {79}\) between the circumstantial evidence and the occurrence of the concerned offence.\(^ {80}\) In the case of *Pfennig v R*\(^ {81}\), the difficult issue raised as how to find the direct evidence to reach a conclusion of murder and sexual offence committed on a boy by the defendant, while the circumstantial evidence did not establish the defendant’s

\(^{74}\) Ibid.
\(^{75}\) Criminal Law (Sexual Offences) Act 1978 (Qld) s 4.
\(^{76}\) Ibid.
\(^{77}\) *Pfenning* (1982) 150 CLR 580, [71]-[72].
\(^{78}\) Ibid.
\(^{79}\) Ibid.
\(^{80}\) Ibid.
\(^{81}\) *Pfenning* (1982) 150 CLR 580.
intention to kill the boy and the cause of the boy’s disappearance. However, the circumstantial evidence showed a degree of ‘high similarity and unity’ that: i/ a van was used in the two abductions for sex; ii/ the defendant’s van was suitable for this purpose, and; iii/ the defendant had initiated conversation with the boy near the defendant’s van. As such, the evidence should be admitted because its probative values outweighed its possible prejudice on the ground that it established the defendant’s intention and habitual method of abducting a boy for sex by following the same modus operandi. Mason CJ, Deane, and Dawson JJ applied exclusion method to contend that no other inference rather than the one by the prosecution could reasonable explain the death of the boy. In this sense, though, with all available evidence, no reasonable inference could be established to support the defendant’s innocence, the judgement by His Honours may come under Doyle’s critics of misleading effects caused by circumstantial evidence.

However, when it comes to cases of sexual offence, it is essential for the judges to give ‘appropriate direction’ and ‘limited purposes’ in the situation where evidence is used against the complainant. If the evidence does not meet the criteria regarding probative value, it may be subject to exclusion. In this sense, Doyle’s critics of circumstantial evidence may be understandable on the ground of lacking direct evidence in a particular case, however, it does not arrive at a reasonable resolution with evidence available at hand. The Court in HML v The Queen acknowledged the shortcoming effects of ‘uncharged-act’ circumstantial evidence and proposed a practical resolving principle in which, in admitting the evidence, the courts may give directions to or warn the jury of unfair reasoning in safeguarding against the potential prejudicial effects caused by the admitted evidence.

Kirby, Gummow, Heydon, Hayne JJ, and Gleeson CJ considered similar-fact evidence as having high prejudicial effects, and thus, should be treated with the same test applied for circumstantial evidence to examine as to whether the defendant’s innocence could be rationally explained in consistence with the circumstantial evidence. Even though, similar-fact evidence, with its potential prejudicial effects, may not eliminate Doyle’s detective doubt that a peculiarity may exist outside the fact inferred from circumstantial evidence, would still be considered as true, and thus,
might be approved by the jury. The assumption that evidence other than similar-fact ones may eliminate any reasonable doubt could be seen as a rationale in detective literature where Doyle can assure that only one conclusion is possible for the cause of the concerned offence. However, when a case comes before the court, it is often lack of evidence other than similar-fact ones, and thus no direct link can be established between the cause of an offence and available evidence by such assumption. On the contrary, the assumption that solely relies on evidence other than similar-fact ones may not be sufficient to extinguish a reasonable doubt. In this sense, the interests of the accused would be more defended if taking into account a potential possibility that evidence other than similar-fact ones, such as direct evidence, may be also altered to wrongly impose injustice upon the accused. As such, it would be more useful to consider similar-fact evidence and direct evidence in the relationship with the whole evidence to answer as to whether a reasonable doubt is possible.

Sections 97 and 98 of the Cth Evidence Act 1995, as equivalent to those of the same purposes and characteristics in NSW and other jurisdictions, establish exceptions against probative values of coincidence and tendency rules concerning the accused’s characters. In regarding to one victim’s death and the insulin overdose of another victim, Hulme J considered the similar-fact evidence’s purpose under s 98 as to showing the similarities of these events to prove that the defendant has committed these offensive acts while pointing out the possibility of incidental occurrences in which the events may be caused by different persons’ acts. Regarding to s 101(2), without the defendant’s objection to the evidence of coincidence, His Honour determined that there existed no suggestion of prejudicial effect, and thus, the probative values of the evidence, for any reason, will outweigh its prejudicial effect. Thus, under ss 97(1)(b) and 98(1)(b), the probative values of the evidence made it reasonable to be cross-examined. In addition, circumstantial evidence has accumulated to satisfy, beyond the reasonable doubt, that the defendant was guilty regarding the offences in each events. However, taking into account Doyle’s critics of circumstantial evidence, it could be argued that having no objection raised by the defendant did not necessary suggest that prejudicial effects of coincidence evidence did not exist. The defendant may, for some reasons, not raise the objection, for example, he may know the

93 Ibid.
94 Hoch v The Queen [1988] HCA 50.
96 Evidence Act 1995 (Cth) ss 97, 98.
97 Ibid.
98 R v Davis [2016] NSWSC 1362, [188]-[196] (‘Davis’).
99 Evidence Act 1995 (Cth) s 101(2).
100 Davis [2016] NSWSC 1362, [188]-[196].
101 Evidence Act 1995 (Cth) s 97(1)(b).
102 Ibid 98(1)(b).
103 Davis [2016] NSWSC 1362, [188]-[196].
104 Davis [2016] NSWSC 1362, [238]-[265], 266.
actual perpetrator but did not want to expose the truth because of having close relationship with the perpetrator. Notwithstanding the critics in Doyle’s detective novel, circumstantial evidence, in the form of coincidence and tendency one, under s 101\(^{105}\) and in conjunction with ss 97 and 98 of the Cth Evidence Act 1995, is generally not allowed to be used against the accused in criminal proceeding unless the evidence’s prejudicial effects on the accused are outweighed by its probative values. Sections 101(3) and (4)\(^{106}\) will not apply where the coincidence and tendency evidence is advanced with the purpose to contravene the coincidence and tendency evidence advanced by the accused. Furthermore, ss 110 and 111\(^{107}\) address the evidence about the defendant’s and the co-defendant’s personal characters. However, s 94\(^{108}\), as giving guideline to the application for Part 3.6 of the uniform-evidence-legislation, specifies the exceptions that ss 110 and 111 cannot be applied to evidence only concerning a witness’s credibility; and/or reputation, character, conduct, and tendency of a person if they constitute a fact in concern. As such, the combination effect of ss 110, 111, and 94 seems to foster Doyle’s critics of circumstantial evidence in making the issue in a criminal proceeding not subject to principles established in ss 97 and 98 if the facts in issue are mainly inferred by the use of coincidence and tendency reasoning.

On one hand, following Doyle’s critics of prejudice effects on circumstantial evidence on the accused, the accused may apply similar-fact evidence as a counter balance to prove his or her innocence. For instance, the accused may establish that the complainant has the propensity to maliciously advance evidence of similar facts. The ordinary rules of similar-fact evidence applying to the defence suggest that a reasonable doubt needs to be raised to accomplish the court’s judgement of acquittal. In *Ex parte Jones*\(^{109}\), the defendant’s evidence to establish that he, and two other persons, was arrested unlawfully by a police officer was admitted by the Court on the basis that it established the police officer’s tendency to illegitimately arrest civilians.\(^{110}\) On the other hand, it seems to be insufficient to consider that it is reasonable to consider prejudice as not arising in civil cases because there exists no accused in these cases. In civil cases, the courts often employ the common rules of relevance to make decision on admission or denial of similar-fact evidence. In *Mister Figgins*\(^{111}\), the Court admitted the similar-fact evidence leaded by the applicant to establish that similar fraudulent representation has been made by the defendant to induce him and other tenants into leasing contracts\(^{112}\). The Court made the decision on the basis that the probability of fraudulence to the applicant will increase if the same fraudulence has been committed by the

\(^{105}\) *Evidence Act 1995* (Cth) s 101.

\(^{106}\) Ibid 101(3)-(4).

\(^{107}\) Ibid 110-111.

\(^{108}\) Ibid 94.

\(^{109}\) *Knight v Jones* [1981] Qd R 98.

\(^{110}\) Ibid.

\(^{111}\) *Mister Figgins Pty Ltd v Centrepoint Freehold Pty Ltd* (1981) 36 ALR 23.

\(^{112}\) Ibid.
defendant on other persons. The admission of the similar-fact evidence in this case may be admitted on the ground of relevance, however, it would potentially be a miscarriage of justice to reach a conclusion of guilt by inferring the facts in issue from such evidence, if viewing the issue from Doyle’s critics of circumstantial evidence.

V. Some conclusion remarks

From all the above discussion, some conclusion remarks can be drawn as follows. Doyle’s critics of circumstantial evidence is conceivable as ordinary wisdom and useful for detective investigation of crimes, in considering all probabilities that could exist within and outside the inference deduced from circumstantial evidence. However, at law, not all inferences established by circumstantial evidence would be the subject of the test of proving a conclusion of guilt beyond reasonable doubt. In many situations, in the absence of direct evidence, the courts only examine the available circumstantial evidence to arrive at the most reasonable conclusion of guilt or innocence. In making the decision regarding denial and admission of circumstantial evidence, the courts’ paramount duty is to examine the relevance of the evidence and answer as to whether probative values of the circumstantial evidence will outweigh its prejudicial effects, taking into account the principles of standard of proof, cumulative effects of circumstantial evidence, character evidence, and similar-fact evidence. In short, in the absence of direct evidence, the court’s proceeding is characterized by the issue of determining as to whether circumstantial evidence is valid and allowed, and often exposed to disputes, of which Doyle’s perspective is one of the most significant. As implied by Doyle, under the effects of judicial traditions and the precedent principles, it may be inappropriate for the courts to look at the facts in issue in the same light with only what discovered by detective investigation. Under the light of justice, Doyle’s statements emphasized the notion that a fact in issue may be explained differently from different points of view, which bears important implications for improving the courts’ proceeding as far as the interests of both the accused and the complainant are adequately concerned.

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113 Ibid.
114 Above n 5.