

This is a long way from putting a man in the position you are suggesting. May I respectfully suggest that if we now put a definition in this section which parallels the other, we can confuse the interpretations which are well established, and, because these are included in the same act, this could well take away from the previous sections the presumption of innocence which carries through and gives the prisoner the benefit of the doubt in the interpretation in the defence that is presently available to him under other sections of the act.

The CHAIRMAN: But the only place where the benefit of the doubt would occur would be if a man were charged with possession of narcotics or possession of LSD under this and then the Crown establishes a *prima facie* case of possession. The accused is then on his defence.

Senator PROWSE: Once the court says that it finds this man has been in possession of "X", then the accused is in the possession of it and he must give a reasonable explanation. He does not have to prove the truth of his explanation.

The CHAIRMAN: I was not suggesting that.

Senator PROWSE: I mean there is a point here in which the presumption of innocence carries over against the presumption under the way the law has been applied and the way it will be applied in this act at the present time. You are well aware of the principle of law which says that if in an act you say in particular a certain thing in a certain place and in another part of the act you do not say that, then we can have the effect by adding the presumption which you have here of taking away from him the presumption of innocence which acts to the benefit of the person in the other part of the act so that he is then faced with the necessity of having to prove his excuse and not merely present it.

The CHAIRMAN: Now, I think we are going to have to adjourn shortly to go into the Senate, and I intended to ask Mr. McCarthy and his advisor to consider this suggestion that I have made. I am not talking about this bill so far as it relates to the offence of possession. I am not talking about this bill so far as it relates to the offence of trafficking. I am talking about this bill only in respect of the third offence which it creates, which is being in possession for the purpose of trafficking. I am talking not about the presumption in that case but about the obligation on the accused to establish that he was not in possession for the purpose of trafficking. And I say that the Crown can gain every advantage without our having to violate a very old principle of law that the accused is innocent until he is proven guilty.

Senator PROWSE: Mr. Chairman, that very thing that appears here says that once you have established possession it shall be presumed that it is possession for the purpose of trafficking, and the person then must meet that allegation. That is presently in the act without this. This is in the act as it applies to both narcotics and controlled drugs at the present time.

The CHAIRMAN: But we could have different principles and different penalties and everything else in relation to restricted drugs.

Senator PROWSE: I think if you put this different principle in you are going to find you are affecting the other, and I say that at the present time this very stringent provision has been interpreted by the courts so as to give the accused a very reasonable and useful benefit of a continuing presumption of innocence.

In other words, while he has to meet a presumption, the requirements on him are very simple. All he has to do is to set up an excuse which might reasonably be true.

The CHAIRMAN: Let us assume that possession is proven under the charge of possession for the purpose of trafficking. If the man goes in the witness box after the judge has said, "I convict you of possession," what kind of defence can he offer then? The only one he can offer, as I see it, is, "Well, I am a drug addict. This was for my own use", and if the quantity were an ounce, do you think any judge would believe that?