

THE CHARITABLE SPIRIT OF THE LAW.

"nearly if not altogether reduced to its true place in the administration of criminal law, viz. : that of a circumstance."—*ib.* 585).

And as the law presumes against crime, illegality and dishonesty, so it presumes also against all vice and immorality and in favour of marriage. It would be out of place to speak here of the great lengths to which this presumption has been carried in Scotland, owing to the peculiar marriage law of "that remarkable country." But in one of these Scotch cases: *Breadalbane's case*, 1 L. R. H. L. S. 199, Lord Cranworth says:—"By the law of England, and, I presume, of all other Christian countries, where a man and woman have long lived together as man and wife, and have been so treated by their friends and neighbours, there is a *prima facie* presumption that they really are and have been what they profess to be." And here is found an exception which illustrates the charity and mercy of the law even more clearly than the rule itself. For where there is an indictment for bigamy, or a claim for damages against an alleged adulterer, the presumption is by no means in favour of marriage. On the contrary, in such cases, it is necessary to prove a marriage valid in all respects: *Catherwood v. Caslon*, 13 M. & W., 261 (1844). And the maxim *Pater est quem nuptiæ demonstrant*, and *Semper præsumitur pro legitimatione puerorum et filiatione non potest probari* (5 Co. 98, b.) are further illustrations. At one time, indeed, the presumption in favour of legitimacy was irrebuttable if the husband was within the four seas, that is within the jurisdiction of the King of England, at any time during the pregnancy of the wife, unless there was an apparent impossibility of legitimacy (Co. Litt. 244, a; Phil. Ev. 1, 472, Ed. 10). But now it may be rebutted: those however, who dispute the

child's legitimacy are bound to make out the contrary: *Wright v. Holdgate*, 3 Car. & K. 158 (1850). And in the *Banbury Peerage case*, 1 Sim. & S. 156 (1811), it is given as the opinion of all the Judges that when intercourse has been established no evidence can be received to prove a child illegitimate except it tend to falsify the proof that such intercourse has taken place: the law will not allow a balance of evidence as to who was most likely to be the father of the child. No doubt decency, morality and policy (see per Lord Mansfield in *Goodright v. Moss*, 2 Cowp. 594), are the foundation of the whole law of marriage, but whatever the reasons for their establishment, the rules are in their effect of a merciful and charitable nature.

Such, too, is the effect of the strong presumption of the due discharge of their duty by public officials. Thus it is said: *De fide judicis non accipitur questio* (Bac. Max. Reg. 17), and *Omnia præsumuntur rite et solenniter esse acta* (Co. Litt. 232). Public officials are presumed to do their duty, and the fact of a person having acted in an official capacity is presumptive evidence of his due appointment to the office, because it cannot be supposed that any man would venture to intrude himself into a public situation which he was not authorized to fill: Tayl. Ev. 2, 178. It is obvious that public policy requires such presumptions, in order to secure the independence of public officers and prevent their being harassed by vexatious actions—see *Fray v. Blackstone*, 3 B. & S. 576 (1863).

But the charity of the law appears not only in the presumption against all kinds of improper conduct, but in many other different directions. Thus the law inclines strongly against penalties and forfeitures. "The law does not favour forfeitures, which will account for the very strict proof required of a landlord,