

has not been charged; then the magistrate calls upon him to prove he was not trafficking; the accused offers no evidence; then the conviction is under the section of possession for trafficking—and there is no evidence offered at all. If that is not making the accused prove his innocence, I do not know what is. I think there is another way in which it could be done, to accomplish the same result. All I wish to do is to call your attention to what this does—as to whether we want to fly in the face of the provisions in the Bill of Rights.

All I wanted to do was call your attention to what it does and to whether we want to fly in the face of provisions in the Bill of Rights and whether we feel that the offences involved here are so morally wrong that we weigh the public interest much more than we do the old doctrine that a person is presumed innocent until proven guilty.

Senator PROWSE: May I say, sir, that with all respect this is not without precedent in the law? For example, there is the principle of the law known as recent possession, where you charge a man with breaking and entering and the basis of the charge is that he is found to be in possession of recently stolen goods. Unless he can explain his possession of those goods he then is presumed to have stolen them and to have done the things that were done in the course of the theft.

The CHAIRMAN: You know, you are going right along the line of the exception that I made. I said I thought there was a way in which they could do this without running into the provisions of the Bill of Rights, and you have hit right upon it.

Senator PROWSE: Let us hear your suggestions before I argue the point, then.

The CHAIRMAN: I have made a draft, and here it is:

In any prosecution for a violation of subsection 2 of Section 41, if the evidence of possession, including the circumstances under which the accused was found in possession of the restricted drug, establishes in the judgment of the court a *prima facie* case that the accused was in possession of a restricted drug for the purpose of trafficking, the court shall so declare and then the accused shall be put upon his defence and if the accused offers no evidence or if the evidence offered by the accused in the judgment of the court does not refute such *prima facie* case the court shall thereupon convict the accused of the offence charged.

Now, this is exactly the point you are making on the question of recent possession, because if a man is found in possession say of an ounce of LSD, an ounce as we have had evidence here would provide for a quarter of a million trips.

Senator PROWSE: It would, sir.

The CHAIRMAN: Therefore the moment you find that combination of circumstances, he should be put upon his defence and that is parallel to your recent possession doctrine.

Senator PROWSE: Yes, but let me go further and say this: in this particular act the courts have had a lot of experience in the use of the Narcotics Control Act as it now stands and the Food and Drugs Act with the Section (j) under those circumstances, and I am speaking not from theory but from having prosecuted these cases. In the first instance, this judgment is made by the prosecutor to determine whether it is reasonable under the circumstances to determine whether the charge of trafficking ought to be laid or merely the charge of possession should be laid.

Remember this too, in our courts an accused has a lot of things going for him. I know this from my experience as a defence counsel in criminal cases. While there is a presumption set up by the court, all the accused needs to do to defeat that presumption is to raise a reasonable doubt, and, although I forget the names of the cases, they are readily obtainable, and this has been determined time and time again by the cases that the accused does not have to prove that his excuse is true. He does not have to prove his evidence. All he has to do is establish that the excuse he gives might reasonably be true.