

THE CHARITABLE SPIRIT OF THE LAW.

2 H. & C. 722 (1863). Of such cases it may be said *res ipsa loquitur* (*ib.* per Pollock, C. B.). There are, too, certain apparently harsh presumptions attaching to particular trades, as, *e.g.*, common carriers, cabmen, and innkeepers (see, however, R. S. O. c. 147); but such instances are explained as necessary to the public welfare.

And, probably, a like necessity must be evoked to justify the many undeniably hard cases which have arisen out of the rule that, where, by the use of clear and unequivocal language, capable of only one meaning, anything is enacted by the Legislature, it must be enforced, although it may be absurd or mischievous: *Maxw. on Stats.* 4 sq. Lastly a most notable example of an apparent departure from the predominant spirit of charity occurs in the maxim, *Qui semel malus, semper præsumitur esse malus in eodem genere*. Thus, if A maliciously discharging a gun at B kills C, A is guilty of murder, for the malice is transferred from B to C: *Reg. v. Smith*, 1 Dears. C. C. 559 (1855). And thus also, Bayley, J. is reported to have told the jury that they were to consider the circumstance of an erasure in a certain deed, observing that a man who was capable of making an alteration in one deed might be capable of suppressing another within his power: *Doe v. Hirst*, 11 Price, 488 (1822). Mr. Best (Ev. 551) states that the maxim is found in terms in the Canon Law, and is thus defended from the charge of uncharitableness, by one of the Commentators:—*Regula videtur contraria charitati, quæ non cogitet malum; sed non est. Non enim charitatis est malum non cogitare in omni casu, sed tantum, cum nullum subest fundamentum, quale subest in casu regulæ*. Modern writers have, however, also attacked the maxim as contrary to natural justice and humanity: Phillimore, *Principles and Maxims of Jurisprudence*, 43.

These cases, then, appear to be no real departures from a spirit of charity. And many other striking manifestations of this spirit occur in criminal law, besides those already noticed. Thus although it has been questioned whether it is competent, even in extreme cases, to prove the basis of the *corpus delicti* by presumptive evidence, such evidence is always admissible, and often, especially when amounting to *evidentia rei* most powerful to disprove it: *Best, Ev.* 569. And the wives at least would probably agree that another instance of the same spirit is to be found in the rule laid down in *Rex v. Hughes* (Russ. on Crimes, Ed. 5, vol. 1, p. 147): "The law out of tenderness to the wife, if a felony be committed *in the presence of her husband*, raises a presumption *primâ facie*, . . . that it was done under his coercion." This rule, however, does not extend to crimes which are *mala in se*, nor to such as are heinous in their character or dangerous in their consequences (*Best, Ev.* 543). And altogether the principle of protecting people from punishment on the grounds of coercion appears very carefully guarded: *Arch. Crim. Pl.* 22. Ed. 11.

Other examples, immediately connected with criminal law, may be cited (1) the fact that, although in point of law, *Nullum tempus occurrit regi*, yet as matter of practice *Accusator post rationabile tempus non est audiendus, nisi bene de se commissionem excusaverit*: *Moore*, 817; *Best, Ev.* 461: (2) the fact that suddenly becoming rich is not in our criminal courts any ground for putting a party on his defence: *Best Ev.* 580—although 'How i' the name of thrift does he rake this together?'—may in such circumstances seem a natural thought in the minds of Judge and jury: and (3) the fact that, although it is laid down by Coke—*fatetur facinus qui fugit iudicium*—yet now the evasion of justice seems