

## THE CHARITABLE SPIRIT OF THE LAW.

cause when the construction of any act is left to the law, the law which abhorreth injury and wrong, will never so construe it, as it shall work a wrong. . . And it is a general rule, that whensoever the words of a deed, or of the parties without deed, may have a double intendment, and the one stardeth with law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken. Secondly, the law more respecteth a lesser estate by right, than a larger estate by wrong." And again, Co. Litt, 36 a, "*Verba intentioni, non e contra, debent inservire. . . Benignæ sunt faciendæ interpretationes cartarum propter simplicitatem laicorum ut res magis valeat quam pereat.*" And so in *Lewis v. Davison*, 4 M. & W. 654 (1839), where in consideration that the plaintiff would not press one J. D. for a debt, the defendant agreed that if a *ca. sa.*, should be issued against, J. D., he would surrender J. D. to the Sheriff to be arrested, it was held on demurrer, that the agreement was not necessarily illegal since it must be assumed that the defendant would obtain the arrest of J. D. by lawful means, and Lord Abinger said, "when the Act which is the subject of the contract may, according to the circumstances be lawful or unlawful, it shall not be presumed that the contract was to do the unlawful act, the contrary is the proper inference."

But the presumption in favour of innocence, strong as it is, may of course be over-ruled by stronger presumptions, if any such appear in the case. For instance it is often over-ridden by the presumption of the continuance of things in the state in which they have once been proved to exist. Thus, in *Rex v. Budd*, 5 Esp. 230 (45 Geo. III.) on an indictment for libelling a man in his capacity of public officer, on proof of the prosecutor having held the office previ-

ously to the publication of the libel, his continuing to do so was presumed. Another instance is *Rex v. Harborne*, 2 A. & E, 540 (1835). This was a case regarding the settlement of a female pauper, and it was proved that her husband, who had been previously married, had received a letter from his former wife, written from Van Diemen's land, and dated twenty-five days before he married the said female pauper. It was held that the presumption of innocence could not shut out the presumption of the continuance of life under such circumstances as appeared here, and it must be presumed that the first wife was living at the time of the second marriage. Yet how strong the former presumption is appears from the analogous case of *Rex v. Twining*, 2 Barn. & Ald. 386 (1819), where it was decided that the presumption of the continuance of life derived from the fact of the first husband having been shown to be alive about a year previous to the second marriage, ought not to outweigh the presumption against the commission of crimes, and Bayley, J., said: "The presumption of law is that he (*i.e.* the husband) was not alive when the consequence of his being so is that another person has committed a criminal act." The two cases are discussed at some length in Best on Ev. 6th Ed. pp. 447-450.

In other cases the conflicting presumption *omnia præsumuntur rite esse acta* has been held to override the presumption of innocence. Thus in *Rex v. Gordon*, 1 L. C. L. C. 515 (1789) it was held that on an indictment for the murder of a constable, the fact of the deceased having publicly acted as constable, was *primâ facie* proof of his having been such, without producing his appointment. And in *Rex v. Verelst*, 3 Camp. 432 (1813) it was held,