

As a general rule, the *onus* of proving the material allegations of the charge, lies on the prosecutor. But when a party makes a negative averment which is peculiarly within the knowledge of the other, as when a person is prosecuted for doing an act which is prohibited by law unless he has some license or qualification for doing it, it is a well established principle that it is sufficient for the prosecutor to charge this want of license or qualification against the party, and the burden of proof that he has such license lies on the accused party. This doctrine has been held by Lord Mansfield, C.J., in *Spieres v. Parker*, 1 T. R. 144, and has been invariably followed up to the present time in numerous cases, amongst which the following may be mentioned: *Jelfs v. Ballard*, 1 B. & P. 468 per Heath, J.; *R. v. Stones*, 1 East 653 per Lawrence, J.; *R. v. Turner*, 5 M. & S. 206; *R. v. Burdett*, 4 B. & Ald. 140, per Holroyd, J.; *The Apothecaries Co. v. Bentley*, Ry. & Mo. 159; *R. v. Neville*, 1 B. & Ad. 496, per Parke, J.; *Bridger v. Whitehead*, 8 A. & E. 575, per Lord Denman, C.J.; *Elkin v. Janson*, 13 M. & W. 662; in *re Barrett*, 28 U. C. Q. B. 561.

In this case, the defendant having been charged with selling liquor without a license, it remains for her to prove that she had offe.

It is also claimed that the sale of intoxicating liquor has not been absolutely proven beyond any reasonable doubt, as the statements of the witnesses on that point are more or less contradictory. But the magistrate, after hearing the witnesses and weighing the evidence, found it sufficient to establish that fact. I do not think his finding should be set aside, unless manifestly and directly wrong; and on reading the depositions, I am of opinion that the evidence was such as might justify a magistrate or a jury to come to the conclusion arrived at. I therefore do not feel disposed to disturb it.

As to the commitment, objection is taken that it differs from the conviction, and that it contains terms imposed on the defendant which render it invalid.

The former part thereof recites the conviction and states that the defendant is adjudged to pay a fine of \$50, and \$6.35 for costs, and, in default of paying the same, that the defendant should be imprisoned in the common gaol and there kept at hard labor for the space of one month; and in the latter or