community: and it is in accordance with this charitable and merciful spirit, that the English law disapproves of the maxim of the civilians and canonists, *In atrocissimis leviores conjecturæ sufficient, et licet judici jure transgredi*, which Beccaria justly calls (Ess. on Crimes, chap. 13), "an inhuman maxim, dictated by the most cruel imbecility." We find the very reverse laid down in *Sarah Hobson's* case, L. C. C. 2, 261—where Holroyd, J., says, "The greater the crime the stronger is the proof required for the purpose of conviction," and Burnet in his Criminal Law of Scotland (p. 612, Ed. of 1811) speaks to the same effect.

Nor does the law presume against infringements of criminal and penal statutes only, but also against all fraud and dishonesty. Thus, in the case of *Chancellor of Oxford* v. *Bishop of Coventry*, 10 Co. 53 b. (11 Jacobi 1), we find it was resolved that "covin shall never be intended or presumed at law if it be not specially averred, *quia odiosa et inhonesta non sunt in lege præsumenda, et in facto quod se habet ad bonum et malum, magis de bono quam de malo præsumendum est.* And again, *Nullum iniquum est in jure præsumendum: Hynde's* case, 4 Co. 72 a. Accordingly in *Master* v. *Miller*, 4 T. R. 320 (1791), Buller, J., says "Fraud or felony is not to be presumed, and unless it is found by the jury the Court cannot imply it. *Minet* v. *Gibson*, 3 T. R., 481, 1 H. B. 569, is a most decisive authority for that proposition if any be wanted." And in *Middleton* v. *Barned*, 4 Exch. 241 (1851), an action of trover against some bankers for a bill of exchange, where the case turned on the question whether a clerk had duly delivered a message as ordered, it was held that the presumption that the message was duly delivered was met by one of a stronger character, viz., that the proceeding on the part of the defendants was fair and honest, and that they had a good title to the bill unless it were shown affirmatively that the message had been delivered. Again, in *Shaw* v. *Beck*, 8 East, 400 (1854), where it was attempted to prove fraud attending the execution of a certain deed, it was held (per Parke, B.), that, "the defendants who seek to set the instrument aside as fraudulent must establish fraud, upon the universal principle that every transaction in the first instance is assumed to be valid." And the same presumption against fraud applies in the case of third parties. Thus, in *Ross* v. *Hunter*, 4 T. R. 33 (1790), an action by the assured of goods against the underwriters for a loss by the barratry of the master, the Court refused to presume that the captain went out of his course by the directions of his owner, on the ground that "the Court cannot presume fraud in another person," (per Buller, J., p. 38).

So again, no species of ouster will be presumed without proof, either direct or presumptive; and possession is never considered adverse if it can be referred to a lawful title. Thus, in *Hornblower* v. *Read*, 1 East, 568 (1801), one tenant in common levying a fine of the whole, and taking the rents and profit afterwards for five years, was held no evidence of an ouster of his companion at the time of the fine levied, and Lord Kenyon said, "Without an ouster be found by the jury, the possession of one tenant in common must be taken to be the possession of all." The same point is illustrated by *Fairclaim* v. *Shackleton*, 5 Burr., 2604 (1770), and *Fishar* v. *Prosser*, 1 Cowp., 217 (1774). A strong example is *Milner* v. *Brightwen*, 10 East, 583 (1809). Here a party had taken possession of copyholds on the death of his wife, by an adverse title, and lived