

The Burden of Proof as Affected by Statutory Presumptions of Guilt

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THE LATE Lord Darling in his *Scintillae Juris* made an observation to the effect that a prisoner charged with a crime was presumed to be innocent of it, and that he was the only person in the world who had any such presumption in his favour. No doubt the learned author considered it unnecessary to add that the prisoner is the only person in the world who needs it.

However, this rule, like many at the common law, was not absolute. For example, if an act was unlawful only if it were done without license, it has been held that "the defendant must know the nature of his qualification if he had one, whereas the prosecutor would be obliged, if the burden of proof were cast upon him, to negative ten or twelve different heads of qualification enumerated in the statute—which the court pronounced to be next to impossible."¹ It is upon this that sec. 889 of the Criminal Code of Canada is founded. In point of convenience, surely nothing could be simpler than for a person who is, for example, "carrying concealed a pistol, revolver, sheath knife, bowie knife, dagger, stiletto, metal knuckles or skull cracker," to avoid a charge under sec. 118 of the Code by producing a permit in form 76 if he has one.

The presumption of innocence and its attendant principle that it continues until guilt is proved beyond a reasonable doubt, are deeply ingrained in British criminal law; so true is this that any suggestion of departure from them is met by immediate protest. Thus, the *London Times* of July 17, 1938, refers to some suggestions made by Mr. Claude Mullins, a magistrate of that city, one of which was "that in the event of a cross-roads collision between two cars both drivers should be automatically convicted unless able to prove innocence." The newspaper makes the comment that "This involves waiving the rule that the police must prove their case. A motorist proceeding along a main arterial road who is rammed by a car emerging from a small side lane because the driver of the second car failed to obey the injunction 'Halt at major road ahead' would thus automatically be convicted of dangerous driving, and would be put to all the expense and difficulty of fighting the case." The report adds that "Astonishment is expressed that one of Mr. Mullin's suggestions should be diametrically opposed to the fundamental principle of British justice—that a person is innocent until proved guilty."

Again, the Wolverhampton Corporation Act, 1925, contains a provision that "any person brought before a court of summary jurisdiction charged with having in his possession anything which there is reasonable ground to believe or suspect has been stolen, and *who does not account to the satisfaction of the court for his possession of the same*," shall be liable to specified penalties. *The Journal of Criminal Law*,² after remarking that this places

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¹BEST, EVIDENCE, 11th ed., pp. 297 and 301.

²Vol. 2, p. 82. Compare this provision with sec. 238(a) of the Criminal Code by which a person may be convicted of vagrancy if, under certain circumstances, he fails "to give a good account of himself."