

The Presumption of Guilt

THE REPORT of the Tucker Committee (Cmd. 479) was recently published to a waiting world, and a vague decision was reached in the drawn-out battle between "The Freedom of the Press" and the sanctity of "The Presumption of Innocence." Hearings in camera were frowned upon, but a recommendation was made that only the barest details, i.e. the identities of the Court, of the accused, the legal representatives and the charge, should be published whenever committal proceedings are reported . . . otherwise newspaper reports might prejudice prospective jurors and "The Presumption of Innocence" be thus destroyed.

The members of the Tucker Committee undoubtedly did all that was asked of them but they did not include in their considerations the full impact which a modern Police Force has made upon English Criminal Law. From their conclusions, the reader might believe that the greatest enemy to "The Presumption of Innocence" is the newspaper report of summary proceedings. But, while it must be recognised that newspaper reports may be influential, there is a stronger factor which the Committee did not mention—the strongest factor, indeed, of all.

If we measure the decline of "The Presumption of Innocence" by means of words used by judges when addressing juries, it is possible to follow the slow undermining of the importance of that presumption with the establishment of, and improvement in, modern police methods.

In the early 19th century, before the creation of the Police Service, as we know it today, "The Presumption of Innocence" was a pillar of strength in the Criminal Courts. Judges went to great lengths to impress its importance upon juries. In 1823, for example, Holroyd, J., suggested that a gradation of criminality called for a corresponding gradation of the presumption, and said: "The greater the crime, the stronger the proof required for the purpose of conviction." *R. v. Hobson* (1823), 1.Lew. C.C.261. This is a somewhat dangerous doctrine which, logically, leaves "petty offences" needing little or no proof of either commission or guilt.

Some years later, however, *R. v. Manning* (1849), 30.C.C.C. Sess. Pap. established that, in fact, there is an automatic presumption *against* a crime even having been committed, and, in that case, Lord Chief Baron Pollock (referring to the rebuttal of "The Pre-

Presumption Of Guilt

Sebastian Brünink



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