

## NOTES AND COMMENTS

### *The Burden of Proof in Criminal Cases.*

#### *R. v. Woolmington.*<sup>1</sup>

An interesting and important re-emphasis of the extent to which the burden of proof in criminal cases lies upon the prosecution is contained in the recent decision of the House of Lords in *R. v. Woolmington*<sup>1</sup> reversing the decision of the Court of Criminal Appeal and quashing the conviction of Reginald Woolmington and the sentence of death passed on him by Swift J. The appeal was heard by the Lord Chancellor (Lord Sankey), the Lord Chief Justice (Lord Hewart), Lord Atkin, Lord Tomlin, and Lord Wright, the main ground of the appeal being that Swift J. had misdirected the jury in stating that the onus was on the defence to satisfy them that the shooting of his wife was, as Woolmington said, accidental.

Only one judgment was delivered. It was given by the Lord Chancellor, who said it was true, as stated by the Court of Criminal Appeal, that there was apparent authority for the law as laid down by Mr. Justice Swift, but their Lordships had had the advantage of a prolonged and exhaustive inquiry dealing with the matter in debate from the earliest times—an advantage which was not shared by either of the Courts below. Indeed they were referred to legal propositions dating as far back as the reign of King Canute (994-1036), but he did not think it was necessary to go back as far as that.

Having cited and commented upon a large number of legal authorities the Lord Chancellor said: "Is it correct to say that there may arise, in the course of a criminal trial, a situation in which it is incumbent upon the accused to prove his innocence? Throughout the web of the English criminal law one golden thread is always to be seen: That it is the duty of the prosecution to prove the prisoner's guilt, subject to the defence of insanity and also to any statutory exception. If at the end of the whole of the case, there is a reasonable doubt created by the evidence given by either the prosecution or the prisoner as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal.

"No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England, and no attempt to whittle it down can be entertained.

"When dealing with a murder case the Crown must prove (a) death as the result of a voluntary act of the accused and (b) malice of the accused.

"It may prove malice either expressly or by implication, for malice may be implied where death occurs as the result of a voluntary act of

1. *Manchester Guardian*, 31/5/1935.

the accused which is intentional and unprovoked. When evidence of death and malice has been given (this is a question for the jury) the accused is entitled to show by evidence, or by examination of the circumstances adduced by the Crown, that the act on his part which caused death was either unintentional or provoked.

"If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether—even if his explanation be not accepted—the act was unintentional or provoked, the prisoner is entitled to be acquitted.

"It is not the law of England to say, as was said in the summing-up in the present case: 'If the Crown satisfies you that this woman died at the prisoner's hands, then he has to show that there are circumstances to be found in the evidence which have been given from the witness-box in this case which alleviate the crime so that it is only manslaughter or which excused the homicide altogether by showing that it was a pure accident.' "

### *The Law Relating to Married Women.*

The happy state of legal privilege in which married women at present find themselves will be terminated abruptly if a Bill recently introduced in the House of Lords is adopted in Victoria.<sup>2</sup> The Bill gives effect to the recommendations of Lord Hanworth's Law Revision Committee, the interim report of which (published last December) draws attention to some of the anomalies resulting from the Married Women's Property legislation, first introduced in the latter part of last century. The report shows how a married woman has in some respects been legally placed, so that she is not only better off than single and married men, but better off than an unmarried woman. Thus, first, her husband is liable in law for her naked torts—that is, all torts not arising out of a contract. She may indiscriminately take away her neighbours' characters, and the unfortunate man has to pay the damages. Second, the institution of "separate property," a peculiar anomaly invented by the Court of Equity to protect trusts and settlements, often enabled her to escape bankruptcy. Third, there existed for the well-to-do the "restraint in anticipation," another device originally intended to protect a woman from the machinations of her husband, but more effectually protecting her from her creditors.

The new Bill abolishes all these privileges and sets out to reduce the married woman to something of an equality with unmarried women and men.

The first clause provides that a married woman shall:

- (a) Be capable of acquiring, holding, and disposing of any property;
- (b) Be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation;

2. *Vide Manchester Guardian*, 7th June, 1935.

- (c) Be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) Be subject to the law relating to bankruptcy and to the enforcement of judgments and orders, in all respects as if she were a feme-sole.

Clause 2 states that all property which—

- (a) Immediately before the passing of this Act was the separate property of a married woman or held for her separate use in equity; or
- (b) Belongs at the time of her marriage to a woman married after the passing of this Act; or
- (c) After the passing of this Act is acquired by or devolves upon a married woman

shall belong to her in all respects as if she were a feme-sole and may be disposed of accordingly.

Any instrument executed on or after January 1, 1936, shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

One of the provisions relating to restrictions upon anticipation or alienation reads:

The will of any testator who dies more than ten years after the passing of this Act shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after January 1, 1936.

The third clause abolishes the husband's liability for his wife's torts and ante-nuptial contracts, debts, and obligations.

The section of the Bill which deals with proceedings against and contribution between tortfeasors provides that the obtaining of one judgment for damage shall not be a bar to any other person in respect of the same damage.

It remains now for the legislature to evolve some method of coping with the devices whereby a husband and wife, working hand in hand, can with the merest ingenuity take complete and effective shelter behind one another, to the great distress and delay of creditors. When this is done some of the unfairest consequences of matrimony will have vanished.

### *Rogues and Vagabonds.*

The Vagrancy Bill introduced in the House of Commons on March 26 and recently reported to have received the Royal Assent removes one of the most infamous pieces of legislation ever to have found its way into the Statute Book. The new Act repeals the section of the Vagrancy Act of 1824, which rendered any person "wandering abroad and lodging" in any "barn or outhouse or in any deserted or

unoccupied building, or in the open air or under a tent, or in any cart or waggon without visible means of subsistence" punishable as a rogue and vagabond.

The *Manchester Guardian* reports that the new Act is a direct result of the death in prison of an ex-soldier, whose only offence was sleeping out "without visible means of subsistence." The words quoted are now repealed, and no person so "wandering abroad and lodging" shall be deemed a rogue or vagabond unless it is proved—

- (a) That, in relation to the occasion on which he lodged as aforesaid, he had been directed to a reasonably accessible place of shelter and failed to apply for, or refused, accommodation there.
- (b) That he is a person who persistently wanders abroad and, notwithstanding that a place of shelter is reasonably accessible, lodges or attempts to lodge as aforesaid; or
- (c) That by, or in the course of, lodging as aforesaid he caused damage to property, infection with vermin, or other offensive consequence, or that he lodged as aforesaid in such circumstances as to appear to be likely so to do.

The expression "a place of shelter" means a place where provision is regularly made for giving (free of charge) accommodation for the night to such persons as apply therefor, and the reference to a person lodging under a tent or in a cart or waggon shall not be deemed to include a person lodging under a tent or in a cart or waggon with or in which he travels.