

**A TREATISE ON PRESUMPTIONS OF  
LAW AND FACT, WITH THE THEORY  
AND RULES OF PRESUMPTIVE OR  
CIRCUMTANTIAL PROOF IN  
CRIMINAL CASES**

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A Treatise on Presumptions of Law and Fact, with the Theory and Rules of Presumptive Or Circumstantial Proof in Criminal Cases by W. M. Best

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**W. M. BEST**

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BY W. M. BEST, A. M., LL. B.,  
OF GRAY'S INN, ESQ., BARRISTER AT LAW.

"Materia quam aggressori sumus valde utilis est, et quotidiana in practica; sed confusa, inextricabilis ferè; communis quoque est et jurisconsultis et rhetoribus in genere judiciali."—*Alciatus Tractatus de Presumptionibus, Pars 1, § 1.*

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No. 3 MINOR STREET.  
1845.



## P R E F A C E.

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THE importance of a right perception of the theory and limits of legal presumption, and of the principles of presumptive reasoning in criminal cases, will not, it is apprehended, be questioned. But, although treatises devoted exclusively to the latter have appeared from time to time,<sup>(a)</sup> and one class of presumptions has furnished matter for a volume,<sup>(b)</sup> no attempt has hitherto been made to treat, in a systematic manner,<sup>(c)</sup> the whole subject as understood and acted on in courts of law. To remedy this defect is the object of the present work.

It consists of three parts. The first contains the general principles and division of the subject. The second is devoted to a separate consideration (not an *enumeration*) of the presumptions of law and fact which are usually met with in practice. The third relates to presumptive proof in criminal cases.

In offering this Treatise to the profession, the author begs to express his obligations for valuable hints from several quarters, and especially to Mr. H. Macnamara, of the Inner Temple, to whom he is indebted for the Index to the work,

89, CHANCERY LANE,  
June, 1844.

(a) *Wills on Circumstantial Evidence*, London, 1836; *Theory of Presumptive Proof*, attributed to Mr. Phillips, London, 1815, &c.

(b) *A Treatise on the Doctrine of Presumption and Presumptive Evidence, affecting the Title to Real and Personal Property*, by John H. Matthews, Esq., Barrister-at-Law, London, 1837.

(c) The civilians have been less remiss in this respect, and the author takes the opportunity of acknowledging the assistance he has derived from their labours. Besides various treatises on proof in general, and the commentaries on the titles "*De Probationibus et Presumptionibus*," in the *Digest*, (lib. 22, tit. 3,) and "*De Probationibus*," in the *Code*, (lib. 4, tit. 19,) the work of Menochius on Presumptions alone extends to two volumes folio, and the treatise on the same subject by Alciatus is of a fair length.

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