

sition of the Committee which merits our attention is as follows : "It is strongly urged that in order to the constitution of a crime whether common law or statutory, there must be a *mens rea* on the part of the accused, and he may avoid conviction by showing that such *mens rea* did not exist. This is a proposition which their lordships do not desire to dispute; but the questions whether a particular intent is made an element of a statutory crime, and, when that is not the case, whether there is an absence of *mens rea* in the accused, are questions entirely different, and depend on different considerations. In cases where a statute requires a motive to be proved as an essential element of the crime, the prosecution must fail if it is not proved. On the other hand, the absence of *mens rea* really consists in an honest and reasonable belief entertained by the accused of the existence of facts which, if true, would make the act charged against him innocent. The case of *Sherras v. De Rutzen*, 64 Law J. Rep. M.C. 218; L.R. (1895) 1 Q.B. 918, is an instance of its absence." The decision of the Judicial Committee, which was with reference to an indictable offence, is certainly not calculated to strengthen the judgment in *Derbyshire v. Houlston* (noted *ante*, p. 280).—*Ib.*

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### INJURY TO THE NERVES.

The primitive common law cared little for nerves. It dismissed nervous sufferings contemptuously as sentimental. But one of the best qualities of the common law is its power of adjusting itself to the changing conditions of the social environment. In divorce, for instance, the conception of cruelty is no longer confined to bodily injury or reasonable apprehension thereof. It includes conduct endangering a wife's health or injurious to her feelings, and the same principle is spreading to torts. It is true if an express train whizzes by you without touching you that you can get no redress for the fright, though the shock may shatter your nervous system. There must be 'impact' (*The Victorian Railway Commissioners v. Coultas*)—so much mediæval materialism still clings to our law, but such an alarm differs, *toto cælo*, from a malicious hoax like that of telling a wife that her husband is lying disabled by an accident (*Wilkinson v. Downton*). Here are all the elements of a genuine tort or wrong, and it would be a reproach to any system of law if such a hoax were