

Justification or Excuse.

16. COMMON LAW RULE IN FORCE.—All rules and principles of the common law which render any circumstances a justification or excuse for any Act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith. 55-56 V., c. 29, s. 7.

Defence of being drunk comes under this section. *Marsh v. Loader*, 11 W. R. 784.

17. CHILDREN UNDER SEVEN.—No person shall be convicted of an offence by reason of any act or omission of such person when under the age of seven years. 55-56 V., c. 29, s. 9.

No proof can be admitted of the capacity of an infant under seven years to commit a crime. *R. v. Owen*, Warb. Lead. Cas. 2d ed. 17, 4 C. & P. 236.

18. CHILDREN BETWEEN SEVEN AND THIRTEEN.—No person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong. 55-56 V., c. 29, s. 10.

Such an infant is presumed to be incapable to commit any crime until the contrary is proved, and such a proof must be clear and beyond all doubt. 2 Blacks. 23.

This refers to mental ability to distinguish right from wrong, not to physical ability to commit crime. *R. v. Harten* (1898), 2 Can. C. C. 12, 30 N. S. R. 317.

A boy under fourteen cannot be convicted of perjury without proof that he knew he was doing wrong; *R. v. Carvery*, 11 Can. C. C. 331.

A boy under fourteen cannot, in law, commit a rape; section 298; nor the offence of carnally knowing a girl under fourteen, under section 301, *R. v. Waite*, [1892], 2 Q. B. 600, nor, any of the offences where carnal connection with a woman is a necessary ingredient of the offence, or any attempt to commit rape or any of the above mentioned offences; compare *R. v. Eldershaw*, 3 C. & P. 396; *R. v. Groombridge*, 7 C. & P. 582; *R. v. Philips*, 8 C. & P. 736; *R. v. Jordan*, 9 C. & P. 118; *R. v. Brimlow*, 2 Moo. 122, 1 Russ. 8; *R. v. Allen*, 1 Den. 394.

A person of the age of fourteen and upwards is presumed to have capacity to commit any crime until the contrary is proved; see *R. v. Owen*, Warb. Lead. Cas. 2d ed. 17; *R. v. Vamplew*, 3 F. & F. 529.

19. INSANITY.—No person shall be convicted of an offence by reason of an act done or omitted by him when labouring