

of the mens rea, and constitutes an act a crime in itself, irrespective of the mental element, it should be expressed in the clearest possible language.

*Regina v. Woodrow*, 15 M. & W., 404, is an authority for the principle that a penalty may be incurred under a prohibitory statute, where the offending individual had no intention of infringing its provisions. The defendant in this cause was a retailer of tobacco and was liable to a penalty of £200 imposed by statute for having in his possession adulterated tobacco. He was convicted, although he had purchased it as genuine, and had no knowledge or cause to suspect, that it was not so. The plea of the absence of mens rea did not avail as a defence with the Court on appeal, the conviction having been sustained.

On the other hand, the case of *Sherras v. DeKnutzen*, (1895) 1 Q.B. 918, is an authority upholding a directly opposite doctrine. In this case a publican had been fined, under the provisions of a statute regulating the sale of liquor, for the offence of selling liquor to a constable on duty. The conviction was set aside by the Court, because the accused believed and had reasonable grounds for his belief, that the constable was not on duty at the time. In this case the absence of mens rea did avail as a defence.

The two great leading cases on the subject on mens rea are *The Queen v. Prince*, (1875) 2 C.C.R. 154, and *The Queen v. Tolson*, (1889) L.R. 23 Q.B.D. 168. In the former case the defendant was convicted under s. 55 of 24 & 25 Vict. c. 100, which provides that "Whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor."

It was proved on the hearing that the girl was only fourteen years of age when taken from her father and without his consent by the prisoner. The jury found upon reasonable evidence, that before the defendant took her away she had told him she was eighteen years of age, and that the defendant bona fide believed her statement, and that such belief was reasonable.

The Court of Appeal reserved the case for the consideration of all the judges. By the judgment of sixteen of the judges the