

*MENS REA.*

The application to English cases of the Civil Law maxim, *Actio non facit reum nisi sit mens rea*, has been traced in English jurisprudence as far back as the times of the first Henry, in the twelfth century. It had, however, been a guiding principle in our criminal law from the earliest times, that in order to fasten the penalty of criminal offence upon one, a guilty mind must have formed an essential ingredient.

Lord Chief Justice Kenyon says: "It is a principle of natural justice and of our laws, that the intent and the act must both concur to constitute crime." To the like effect are the words of Chief Justice Earle:—"A man cannot be said to be guilty of a delict, unless to some extent his mind goes with the act."

The introduction of this phrase into our criminal jurisprudence has been the fruitful source of conflicting opinions amongst our ablest judges. This has arisen partly from the want of a proper application of the maxim under the varying phases of facts and statutory enactments in our law. The phrase originally was made to apply to criminal offences *mala in se*; but it has been as frequently invoked in offences *mala prohibita*, for the doing or not doing of certain acts which, apart from the statute, are naturally and *per se* indifferent.

Cave J. designates it as a "somewhat uncouth maxim." Nor does Stephen, J., regard it with greater favor. This eminent judge calls it—"a most unfortunate phrase." He thinks it "not only likely to mislead, but actually misleading." "That it is more like the title of a treatise than a practical rule."

The difficulty in the proper application of the maxim has been greatly enhanced by the carelessness of the legislature in framing penal acts. In many cases, the scope of the Act, a careful consideration of the object sought to be attained, as well as its phraseology are all to be carefully weighed in determining whether it was intended to fix criminal responsibility upon the infringement of its provisions whether intentional or unintentional. If such in fact were its object, the presence or absence of *mens rea* could not enter as a determining factor of innocence or guilt. Once the infraction of the law is proved, the penalty as a necessary consequence follows. This much, however, may be said, that in all cases when the legislature chooses to dispense with the necessity