

judges who constituted the majority, and to the reasons given in their judgments, I am of opinion, upon authority as well as principle, that the conviction should be affirmed. The only observation which I wish to make is (speaking for myself only) that I agree with my learned brother Stephen in thinking that the phrases 'mens rea' and 'non est reus nisi mens sit rea' are not of much practical value, and are not only 'likely to mislead,' but are 'absolutely misleading.' Whether they have had that effect in the present case on the one side or the other it is not for me to say."

The case of *Dickson v. Stevens*, 31 N.B. Rep. 611, seems a particularly hard one. In this case it was decided by three of the judges of the Supreme Court of N.B. (Allen, C. J., and Palmer, J., dissenting) that a vessel was liable to seizure and the captain and owner subject to a penalty of \$400.00 for having sent three shirts ashore to his home to be washed; and the person who took them, also having taken with them from the master's trunk, without his knowledge, some worthless samples of wall paper, on the ground that he had not first reported to the custom-house officer on entering port, under the Customs Act, 1 R.S.C. c. 32, s. 28. There was no pretence that duty could be collected on any of these articles, or that an attempt had been made to evade the revenue laws. It was held by a majority of the Court that these facts ought to have no weight in construing the act.

Tuck, J., at page 615, says:—"Even if it seems absurd to arrest a ship because three soiled shirts, some clothing and samples of wall paper were taken ashore before a report was made, this Court must construe the Statute according to its true meaning, though such construction leads to an absurdity. . . . But it is contended that, to make the master liable to the penalty, or the vessel to the seizure, the offence must have been knowingly committed; there must have been a guilty mind before there could be any liability. It is laid down that, with few exceptions, a guilty mind is an essential element in a breach of a criminal or penal law. It seems to me that, under this Statute, the question of intention is not an essential element. A vessel may be seized for violation of the Customs Act although the master and owners were wholly ignorant of the illegal action. It is to be gathered from all the penal clauses that there may be liability without the offender knowing that he was committing an offence."