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MENS REA AND THE MARRIAGE LAW.

The first thing that catches the eye in the somewhat voluminous report of *Regina v. Tolson*, 58 Law J. Rep. M. C. 97, reported in the July number of the *Law Journal Reports*, is the footnote to the words, 'No counsel appeared for the prosecution.' It is to the effect that on the day for the delivery of judgment, in consequence of an intimation from some of the judges, the Solicitor-General and Mr. R. S. Wright appeared on behalf of the Crown, but, as the court was not fully constituted as before, did not offer any further argument. By section 2 of the Prosecution of Offences Act, 1879, it is enacted that it shall be the duty of the Director of Public Prosecutions, under the superintendence of the Attorney-General, to carry on such criminal proceedings in the Court, among others, of Crown Cases Reserved, as may be for the time being prescribed by regulations under the Act, or may be directed in a special case by the Attorney-General. Regulation 4 of the regulations under this Act, made by Sir Richard Webster, provides that where it is brought to the notice of the Director of Public Prosecutions that a case has been reserved under the Crown Cases Reserved Act, 1848, and that counsel has not been instructed for the prosecution, he shall, if he thinks the case to be of sufficient importance, or is so directed by the Attorney-General, instruct counsel to appear for the prosecution. That the case *Regina v. Tolson* was not only of sufficient importance to be argued for the Crown, but was one of the most important criminal cases which have occurred for many years, was obvious to the holder of his first quarter sessions brief, but the responsible authorities appear to have been sublimely unconscious of it. The case was reserved in July in last year. It appeared in due course in the lists after the Long Vacation, and was reached on January 26. After an argument for the accused, judgment was reserved, when some

of the judges, on whom no duty was imposed in the matter, were driven to ask the Attorney-General for an argument on the other side. This assistance appeared on the scene too late. The judges had prepared their judgments. They differed in opinion on a matter as to which their opinion is final on a subject of crucial importance to social life, and the majority decided against the Crown, whose advisers appeared indifferent of the result. The decision is officially an authority, but the Court for the Consideration of Crown Cases Reserved, following a precedent set by the Judicial Committee in regard to the authority of cases decided on hearing one side only, may overrule itself, and it is to be hoped that an early opportunity will be taken of reserving the question again so that it may be thoroughly argued out on both sides and a satisfactory decision arrived at.

Meanwhile the decision that a belief in good faith and on reasonable grounds in the death of a husband or wife is a defence to an indictment for bigamy is the law of the land, subject to its resting only on the authority of nine judges against five hearing an argument on one side only, and subject to that very irregular Court of Appeal which goes by the name of the opinion of the profession. That court has at least the right of overhauling the reasons of a decision, and in this particular case, when it studies them, will be struck by the fact of the narrowness of the area discussed by the prevailing judges. The opinion seems to have prevailed that the question was to be decided on considerations mainly of the application of the maxim 'Actus non facit reum nisi mens sit rea,' as one of the half-dozen tags of principle too often considered sufficient for the application of the law to crime. It must, however, not be forgotten that the criminal law is only a branch of the general law, and that in cases like the present, in which the law of domestic relations is concerned, the considerations ordinarily applicable to criminal cases give way to wider considerations of general law. It is not enough to follow a single maxim of criminal law to its logical result. It is necessary to look at the result when it is arrived at to see whether that was the goal which the lawgiver intended. The severe