

speak to the date of the birth." Page 270, Ed. 1878. There is now in England a statute which makes a certificate of birth proof of the date of the birth, provided the identity is established, but this statute does not exclude the common law principle as to evidence on this point. See same author, page 883.

Removing all other questions of a minor character which were raised in the present and the other cases submitted, and which I consider as of no importance, having already declared the facts of the sale proven, I have now to apply the principles of law, as I understand them, to the circumstances of the cases. The nude facts proven are the sale and the minority of the persons to whom it was made. The first question which presents itself is whether the prosecution was obliged to prove the guilty knowledge on the part of the defendant at the time he delivered the liquor—or, under the law as it is framed, is that guilty knowledge to be presumed? It is an uncontested principle of the common law that "when the intent to do a forbidden thing is wanting, a person commits no offence in law, although he does that which is completely within all the words of a statute which prohibits it, and which is silent concerning the intent." The *mens rea* or guilty mind is an essential element in constituting a breach of the criminal law . . . unless a contrary intention be expressed in the statute." See Endlich page 180. And as Baron Parke says (Bishop's Criminal Law, par. 303): "The guilt of the accused must depend on the circumstances as they appeared to him." "Again," says Bishop, "a statute will not generally make an act criminal unless the offender's intent concurred with his act, because the common law requires such concurrence to constitute a crime. A case of overwhelming necessity, or of honest mistake of facts, will thus be excepted out of a *general statutory prohibition*." Yet, it is alleged "that when an act is prohibited absolutely, and the law is silent as to the intent or knowledge, it is sufficient for the prosecution to prove the commission of the act prohibited, and by law the defendant is presumed to have intended to do that very thing." In discussing this point, Judge Ste-

phen, in his History of the Criminal Law of England, page 114, vol. ii, says: "Some degree of knowledge is essential to the criminality both of acts and of criminal omissions, but it is impossible to frame any general proposition upon the subject which will state precisely and accurately the degree and kind of knowledge which is necessary for this purpose, because they vary in different crimes. In many cases there is no difficulty, because the definition of the crime itself states explicitly what is required. Thus, for instance, the receipt of stolen goods, knowing them to be stolen; the passing of counterfeit coin, knowing it to be counterfeit, etc. It is more difficult to say what kind and degree of knowledge is necessary in the cases of crimes which are not so defined as to avoid the difficulty." And at page 116: "The effect of ignorance or mistake as to particular matters of fact connected with an alleged offence is a matter which varies according to the definitions of particular offences." And this is where the difficulty lies as to the application of the clause of our statute which prohibits the sale of intoxicating liquors to minors. Speaking on the subject, Bishop, in his book on Statutory Crimes, par. 355, says: "But there may be a capacity for the criminal intent, while yet no crime is committed, though the outward fact of what otherwise were crime transpires. It is so when one having a mind free from all moral culpability is misled concerning facts." The books are full of illustrations of this doctrine. But the books also contain a few cases, principally Massachusetts ones, in which there is a real or apparent inroad upon this doctrine, not much to be commended. The prosecution, in its factum, has cited many cases, mostly from the Massachusetts courts, stating the doctrine that where an act is positively prohibited by law, the presumption of guilt is presumed and cannot be rebutted. I may say here that, relying upon the best authorities on the subject, I cannot for a moment accept as sound and based upon the principles of law such decisions. There are a few remarks by Bishop about those decisions. Other cases are cited by which it was held that such a presumption can be rebutted.