

Province of British Columbia.**SUPREME COURT.**

Bole, Co. J.]

REX v. HUGHES.

[Oct. 24.]

Indian—Who is—Sale of liquor to—Mens rea.

Defendant was convicted of selling liquor to an Indian contrary to the provisions of the Indian Act. It was admitted that the appellant sold gin to one Jack Nelson, who though described in the conviction as an Indian, was as a matter of fact a quarter-breed. It was contended by the prosecution that Nelson, although a breed was still an Indian within the meaning of the amendment of the Indian Act, which reads thus: "In this section the expression 'Indian, in addition to its ordinary signification as defined in section 2 of this Act, shall extend to and include any person, male or female, who is reputed to belong to a particular band or who follows the Indian mode of life, or any child of such person: 57 & 58 Viet. c. 32, s. 6. It was alleged that Nelson followed the Indian mode of life and lived on an Indian reservation.

Held, assuming for the sake of argument that the contention of the prosecution could be sustained (though the evidence adduced did not satisfy the Court on this point), prima facie, a quarter-breed is as much entitled to buy liquor as a white man, provided he does not come within the purview of the amendment of the Indian Act above cited. As a general rule there is a presumption, that, mens rea, or a knowledge of the wrongfulness of the act is an essential ingredient in every offence, except in such cases as come within the exception to this general rule, there must in general be guilty knowledge on the part of the defendant or of someone whom he has put in his place to act for him or in the particular matter in order to constitute an offence: *R. v. Tolson*, 58 L.J.M.C. 97; *Queen v. Mellon*, 7 Can. Crim. Cases 79; that Nelson from his appearance was a quarter-breed apparently entitled to purchase liquor, if he thought proper to do so. That there being nothing to shew that the defendant knew or had cause to suspect that Nelson was reputed to belong to a particular band, or followed the Indian mode of life, the defendant only acted as any reasonable man could be expected to do under the circumstances.

Appeal allowed, and conviction quashed with costs.