

her parent without the color of excuse and the prisoner took the risk of the ulterior consequences when he did that wrongful act.

Brett, J., held that if the facts were as the prisoner believed them to be, he was guilty of no criminal offence at all, and therefore had no criminal intent at all. That if the girl were over sixteen, as he believed her to be, and went willingly with him, the father would seem to have no legal remedy for such taking. Nor would the act, if the facts were as the prisoner believed them, be one which has ever been a criminal offence in England. In fact he would have done no act for which, if done in the absence of the father, and done with the continuing consent of the girl, the father could have had any legal remedy. After a careful analysis of the statute and a consideration of the leading cases bearing on the point the learned judge came to the conclusion, that as the gravamen of the offence was the taking of a girl under the age of sixteen out of the possession and against the will of her father, and as the jury found the defendant bona fide believed the girl was eighteen, and that such belief was reasonable, there could be no crime in the absence of a criminal mind.

In the other great leading case, *The Queen v. Tolson*, L.R. 23 Q. B. D., 168, the prisoner was convicted of bigamy. She married a second time during the lifetime of her former husband, and within seven years of the time when she last knew of his being alive; but she did so believing in good faith and upon reasonable grounds that her first husband was dead. She was convicted under the statute 24 & 25 Vict., s. 57, which enacts that, "whosoever being married, shall marry any other person during the lifetime of the former husband or wife, shall be guilty of felony." It was held by Coleridge C. J., Hawkins, Stephen, Cave, Day, Smith, Wills, Grantham, and Charles, JJ. (Denman, Field, and Manisty, JJ., and Pollock and Huddleston, BB., dissenting), that a bona fide belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong.

Cave, J., is thus reported at pages 181 and 182:—"At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim, 'actus