

In 1798, Lord Kenyon(s) explicitly adopted the maxim as embodying the criminal law doctrine of complementary "intent" and "act." He says: "It is a principle of natural justice, and of our law, that *actus non facit reum nisi mens sit rea*. The intent and the act must both concur to constitute the crime." Cockburn, C.J., in 1861, even more emphatically insulated this maxim from the mass of proverbial philosophy, and destined it to the criminal law. He said: "*Actus non facit reum nisi mens sit rea* is the foundation of all criminal justice"(t). Sir James Fitzjames Stephen, recognizing the peculiar part the maxim plays in the criminal law, expounds it as follows: "The truth is that the maxim about '*mens rea*' means no more than that the definition of all or nearly all crimes contains not only an outward and visible element, but a mental element, varying according to the different nature of different crimes. Thus, in reference to murder, the '*mens rea*' is any state of mind which comes within the description of malice aforethought. In reference to theft the '*mens rea*' is an intention to deprive the owner of his property permanently, fraudulently, and without claim of right. In reference to forgery the '*mens rea*' is anything which can be described as an intent to defraud. Hence the only means of arriving at a full comprehension of the expression '*mens rea*' is by a detailed examination of the definitions of particular crimes."

"*Actus non facit reum nisi mens sit rea*—this maxim of our criminal law." *Broom's Legal Maxims*(u).

"The guilty state of mind, the *mens rea* or criminal intention." *Harris' Criminal Law*(v).

"The maxim is exclusively applicable to criminal cases, and does not affect civil cases." *Adams Juridical Glossary*(w).

There would seem, then, to be no doubt that the maxim in question has, from the very earliest times down to the present,

(s) *Fowler v. Padget*, 7 T.R. at p. 514.

(t) *Reg. v. Sleep*, 8 Cox C.C. at p. 477.

(u) 7th ed (1900), p. 249.

(v) 10th ed. (1904), p. 11.

(w) 1st ed. (1888), p. 59.