

conduct was not excused by the fact that he did not know, and had no reasonable grounds for supposing, that he was committing any crime at all. But here their agreement ended. One of them, Denman, J., was clearly of opinion that an intention to do anything that was legally wrong at all, even though it might be no crime, but only a tort, would be a sufficient mens rea (p. 179). And seven other judges (including Bramwell, B.) appear to have gone still further, and taken a third view, according to which there is a sufficient mens rea wherever there is an intention to do anything that is morally wrong, even though it be quite innocent legally. If this opinion be correct, the rule as to mens rea will simply be that any man who does any act which he knows to be immoral, must take the risk of its turning out, in fact, to be also criminal." (Kenney, pp. 41, 42.) But such a doctrine, says Dr. Kenney, must be considered highly questionable.

The ratio decidendi of that case, it has been said, rested largely upon the fact, that although there was an absence of the mens rea in the taking so far as the age of the girl was concerned, a wrongful act was done in the taking of the girl out of the lawful possession of her parent without the colour of excuse, and the prisoner took the risk of the ulterior consequences when he did that wrongful act.

The doctrine of mens rea has been the subject of much discussion in regard to bigamy, the leading case being *Reg. v. Tolson* (supra). The jury, in convicting the prisoner, stated in answer to a question put by the judge that they thought she (the prisoner) in good faith and on reasonable grounds believed her husband to be dead at the time of the second marriage. The court quashed the conviction in view of this finding, nine judges being of opinion that the conviction was wrong, while five held it to have been right.

The rule in Tolson's case has been adopted by the Criminal Code, s. 307 (3a).

In *Rex v. Brinkley*, 14 O.L.R. 434, a prosecution for bigamy, one of the grounds of defence was the fact that the wife of the defendant had obtained a divorce in the State of Michigan, under