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sub-sec. 3, of the Act. And, consequently, in my opinion, there was uncontradicted evidence that they were guilty of the offence which was alleged against them. I think the matter must go back to the justices, with that opinion. The order will be made absolute, with costs.

*Order absolute.*

Solicitors for informant: *Sugden & Cornwall.*

Solicitor for defendant: *W. R. Rylah.*

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 February 5, 13.

*Criminal Law—Offence created by Statute—Mens rea, when necessary to prove—Absence of mens rea, when a defence—Onus of proof—Offence, when indictable—Commonwealth Maternity Allowance Act (No. 8 of 1912), ss. 10, 11—Commonwealth Acts Interpretation Act (No. 1 of 1904), s. 4.—Prior charge—Acquittal—Same facts.*

The question whether or not the common law doctrine of *mens rea* is excluded by a particular Statute is to be determined by considering the scope and object of the Statute and the various circumstances which would make the application of the doctrine reasonable or unreasonable, as well as the language of the Statute.

Absence of guilty knowledge on the part of the accused is a defence to a charge under sec. 10 of the *Commonwealth Maternity Allowance Act 1912*.

On the hearing of such a charge the prosecution need only aver and prove a contravention of the terms of the Act; the *onus* of proving absence of guilty knowledge is on the accused.

Offences against sec. 10 of the *Commonwealth Maternity Allowance Act 1912* are indictable by virtue of sec. 4 of the *Commonwealth Acts Interpretation Act 1904*.

It is immaterial to a charge under sec. 10 that the accused has previously been tried and acquitted on an indictment for having conspired with others to do acts made unlawful by the Statute, and that the facts, or some of the facts, relied upon in support of such charge were given in proof of conspiracy.

CROWN CASE RESERVED.

The case was as follows:—

“On the information of the Attorney-General of the Commonwealth, the accused was charged at the Criminal Sittings of the Supreme Court in December 1913 with various offences against section 10 of the *Maternity Allowance Act 1912*. Four of these charges were based on sub-section (a), and five on sub-section (c) of

section 10. No objection by way of demurrer or motion to quash and no plea of *autrefois acquit* was formally taken or put in, but some time after the jury had been empannelled and the address of counsel for the prosecution had commenced, the question was raised whether, having regard to sections 4, 5, and 6 of the *Commonwealth Acts Interpretation Act 1904*, offences under section 10 were triable as indictable offences, and at a later stage it was mentioned by counsel for the accused, and admitted by counsel for the prosecution, that the accused had previously been tried and acquitted on a charge of having conspired with two other persons to do various unlawful acts, and that on the trial the facts, or some of the facts, now relied on were then also relied on in proof of the conspiracy. I was of opinion that the accused on a trial for conspiracy could not have been convicted of an offence under section 10, and on my intimating that opinion, the matter was not further investigated.

"The jury found on two of the cases under sub-section (a) that the accused had obtained maternity allowances which were not payable, there having been evidence to show that in the cases referred to there were no such persons as the alleged mothers of the children. The jury in answers to questions further found that the accused was not aware in either of the two cases that he was obtaining a maternity allowance which was not payable, and that his obtaining it was due to the fact that having then attended or being about to attend a large number of patients in one house, he had signed in blank a number of forms and certificates relating to claims for maternity allowances, expecting them to be properly filled up, and that these two forms had been improperly filled up by Mary Phillips, the proprietress of the house, and that, owing to the omission to take care to see that the forms and certificates were properly filled up, the accused had been paid the maternity allowances referred to, and that if obtaining in this way maternity allowances which were not payable caused the accused to be guilty of the offence, in these two cases he was guilty, but that otherwise he was not guilty.

"In two other cases under sub-section (a) the jury found that maternity allowances which were not payable had been obtained by Mary Phillips, there having been evidence in one case to show that the birth alleged as the foundation of the claim had not taken place, and in the other to show either that no birth as alleged had

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taken place or that the allowance in respect of the birth had been otherwise paid. In answer to questions the jury further found that the accused aided or abetted or was by act or omission in some way directly or indirectly knowingly concerned in obtaining such allowance solely by reason of the fact that he had signed in blank forms and certificates relating to the claims for the allowances as before set out, and that these were improperly filled up by Mary Phillips, and that he had omitted to take care to see that such forms and certificates were properly filled up, and that if on the above facts the accused could be found guilty then he was guilty, but that otherwise he was not guilty.

“ In the five cases under sub-section (c) the jury found that an incorrect statement as to the place where the birth was alleged to have taken place was made or presented to the officer in each case, but that the accused was not aware of the incorrectness of any such statement. They also found in answer to a question that the accused had aided or abetted or was by act or omission in some way directly or indirectly knowingly concerned in the making or presenting of such statement by reason solely of the fact that he had signed forms and certificates relating to the claims for the allowances as before set out, and these were afterwards improperly filled up with the incorrect statement by Mary Phillips, and that he had omitted to take care to see that the forms and certificates were properly filled up, and that if on the above facts the accused could be found guilty then he was guilty, but that otherwise he was not guilty.

“ Desiring to state a case on certain questions of law, I postponed judgment, and released the accused on recognizance.

“ I desire to state the following questions (in respect of difficulties in point of law which arose at the trial) for the determination of the Judges of the Supreme Court:—

“ 1. Having regard to sections 4, 5, and 6 of the *Commonwealth Acts Interpretation Act 1904*, are offences under section 10 of the *Maternity Allowance Act* triable as indictable offences, and if not, should the conviction be quashed or the accused discharged?

“ 2. Should the facts set forth in relation to the previous charge of conspiracy have had any effect on the trial, or do they now affect the verdict?

“ 3. Having regard to the findings of the jury, could a

verdict of guilty be properly entered in respect of any and which of the charges?

"For the purpose of enabling such questions to be answered, my notes of evidence and of the questions to and answers by the jury, and the exhibits, may be referred to as part of this case.

"L. F. CUSSEN."

*Maxwell* and *Paul* for the prisoner—Offences under sec. 10 are not indictable, because they may be punished by a fine. *Mens rea* is an essential ingredient of any offence under the section. Sec. 11, which makes equally guilty persons aiding or abetting, etc., uses the word "knowingly," and the result would follow that if *mens rea* were not necessary under sec. 10 the principal might be convicted though having no guilty mind, and a procurer could not be found guilty unless it were positively proved that he acted knowingly. The presumption is that *mens rea* is an essential ingredient of every criminal offence. The principle is laid down in *Reg. v. Tolson (a)*. See, too, *Sherras v. De Rutzen (b)*.

[CUSSEN, J., referred to *Gleeson v. Hobson (c)*.]

The word "false" in sub-secs. (b) and (c) of sec. 10 means false to the knowledge of the person making the statements, and so involves moral turpitude. So, too, (a) must be taken to involve *mens rea*.

*Morley* for the Crown—The verdict admittedly cannot stand as warranting a conviction except on the two charges under sub-sec. (a) of sec. 10. The Statute is in this section aiming at protecting the revenue, and in such Statutes *mens rea* is not an essential ingredient of the offences created by them: See *Stephens v. Robert Reid and Co. Ltd. (d)*. Sec. 234 (e) of the *Commonwealth Customs Act 1901*, on which the prosecution relied in that case, was practically the same as sec. 10, sub-sec. (c), of this Act. The statements under 10 (b) and (c) need not be false to the knowledge of the person making them.

[CUSSEN, J. Assuming that this is an indictable offence, would not that go to show that *mens rea* was necessary? Can you show me any case where it has been held that *mens rea* has been held

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(a) [1889] 23 Q.B.D. 168, at p. 171. (d) [1902] 28 V.L.R. 82, per Hodges,

(b) [1895] 1 Q.B. 918.

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(c) [1907] V.L.R. 148, at p. 157.

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unnecessary in the case of an indictable offence? Such serious consequences follow from a conviction for an indictable offence.]

The ultimate consequences of a conviction are not proper to be considered in construing an Act of this kind: See the remarks in *Davies v. Young* (e). But in cases under the *Trades Marks Act* 1896, sec. 13, where the offences may be tried either summarily or on indictment, *mens rea* has been held unnecessary. See, too, *Reg. v. Booth* (f). There is nowadays no presumption of the necessity of *mens rea* to be displaced when construing a Statute creating offences: See per Kennedy, L.J., in *Hobbs v. Winchester Corporation* (g).

*Paul* in reply—*Tolson's Case* shows that one of the matters to be considered in deciding whether the Statute makes proof of *mens rea* unnecessary, or its absence a defence, is the question of the penalty attached to the offence. In the abduction cases *Reg. v. Booth* (supra) and *Reg. v. Prince* (h), the act of the prisoner was morally wrong in itself. *Stephens v. Robert Reid and Co.* (supra) is distinguishable. This Act is in no sense in the class of revenue Acts, as was the *Customs Act*.

*Cur. adv. vult.*

A'BECKETT, J. This is a case in which an information was filed, charging various offences against the *Commonwealth Maternity Allowance Act* (No. 8 of 1912), charges based upon different sub-sections of sec. 10 of that Act. The learned Judge who tried the case reserved certain questions for the determination of the Full Court. He reserved three questions. The first of those questions was whether the alleged offences were indictable offences, and on that point very little argument—indeed, no argument—was addressed to us, for sec. 4 of the *Commonwealth Acts Interpretation Act*, making all offences punishable by more than six months' imprisonment indictable, disposes of the question. It is true that there is an alternative, but it is none the less an offence punishable by more than six months' imprisonment. The second question relates to a former trial in which the accused had been charged with others for conspiracy and acquitted on facts some of which were relied

(e) [1910] V.L.R. 369.

(f) [1874] 12 Cox C.C. 231.

(g) [1910] 2 Q.B. 471, at pp. 483, 484.

(h) [1875] L.R. 2 C.C.R. 154.

on in this case, and upon that question no argument was addressed to us, and we think it is clear on the facts appearing in the case that his acquittal on the other charge was not an answer to the charge which he had to meet on this information. We have had no difficulty in disposing of those two questions, and would not have reserved them for further consideration. But the question as to which most—I may say all—of the argument was addressed was the much more important one of whether, stating the matter shortly, the absence of any knowing infringement of the Act, so far as the accused was concerned, entitled him to an acquittal, although, taking the act apart from the state of mind of the person doing that act, an offence in the words of the section was distinctly proved. That question involved the consideration of the matter as applied to several charges which the accused had to meet and upon which the verdict of the jury was given. But by admission of learned counsel representing the Crown we have had our attention confined to two only of the charges, for it was admitted that upon the others the verdict of the jury could not stand as warranting a conviction. With that admission we quite agree; for it almost necessarily follows from the view taken as to these two that the same view would govern the other charges which the accused had to meet. As to those two charges the material part of the case, containing all the facts with reference to them, will be found in the second paragraph of the case. (His Honor here read the second paragraph as set out above, beginning—"The jury found.")

Those two offences were offences under sub-sec. (a) of sec. 10, which provides—"Any person who obtains any maternity allowance which is not payable . . . shall be guilty of an offence." That was the charge. The other sub-sections are—" (b) obtains payment of any maternity allowance by means of any false or misleading statement or (c) makes or presents to the Commissioner or to any officer doing duty in relation to this Act or the regulations any statement or document which is false in any particular . . . shall be guilty of an offence." The contention for the accused—not the only contention, but one of those urged—was that under that section, as a matter of interpretation, guilty knowledge was one of the necessary elements of the offence, and that it would be part of the subject of proof on which the jury would have to be satisfied; that it was an ingredient of the offence; that the Judge

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should say to the jury—"From what you have heard the natural inference is that there was knowledge, but you must find such knowledge"; and as incidental to that argument some stress was laid upon the words "knowingly concerned in the commission of an offence against this Act" in sec. 11. Those words refer, however, to some more distant offences, so to speak, than these—to persons aiding or abetting or being concerned in the commission of any offence against this Act—and I do not think the use of the word "knowingly" in that section with reference to these more remote offences can be at all relied upon to justify the conclusion that "knowingly" was implied in the case of the direct and complete offence. That, to my mind, is no indication that this section constitutes an offence of which guilty knowledge was a material ingredient. I dissent entirely from the view that the section makes knowledge an ingredient of the offence. The Crown, proving that any one of the offences or forbidden acts (a) (b) (c) in sec. 10 has occurred, has to my mind proved sufficient to constitute the material upon which a jury can properly be asked to convict; and, so far as the Act is concerned, it does not prescribe guilty knowledge as an essential. That view seems to me to be one upon which it is most important to arrive at a right conclusion, and that is the conclusion I have arrived at, and, so far as I know, it is not opposed to the views of the other members of the Court.

That, however, does not dispose of the question. The offence, in the words of the Act, having been proved, apart from any ingredient as to the state of mind of the accused in doing it, the question arises whether, if he as a defence offers to show that his mind was free from any guilty knowledge which would make his act an improper and unlawful act, he is to be allowed to prove that fact, and can be properly acquitted by a jury if he on his part—the onus of proof being on him—satisfies them that that was the true condition of his mind. There is a great body of case law upon that subject, and a large number of decisions. A question of this kind was considered in New Zealand in the case of R. v. Ewart (i), and I propose to read some statements from that case, not citing it as law on the authority of the New Zealand Court, but because in that judgment will be found collected what the English Courts have decided on the matter, there being many passages which are mere excerpts

(i) [1905] 25 N.Z. L.R. 709

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from the English reports. It is merely for convenience, therefore, that I read from the New Zealand report. The principle upon which the defendant here relies is thus put:—"The true rule for the determination of the question whether or not the application of the common law doctrine is excluded by the Statute under consideration in each case is to consider the scope and object of the Statute, and the various circumstances which make the application of the doctrine reasonable or unreasonable, as well as the language of the particular Statute under consideration." Well, now, that opens obviously a wide field for consideration, in which various matters have to be considered—the character of the offence, the reason for making it an offence, the circumstances in which it was made an offence, and the whole of the language of the Statute which makes it an offence. It states, however, the position that, although knowledge is not an ingredient of the offence—where that is quite clear—and although an offence, as stated in the words of the Statute, may have been committed, it is in some cases still open for the accused to rely on the defence of an innocent mind. That position is specified and commented on in other English decisions, from which I shall read two very short extracts. Of course, it is quite clear that in some cases the word "knowingly" may be made part of the offence, and in offences and in cases of that class the absence of knowledge would be an excuse. But what is said as to that is that "the presence of the word (knowingly) calls for more evidence on the part of the prosecution, but the absence of the word does not prevent the prisoner from proving to the satisfaction of the jury that the *mens rea* to be *prima facie* inferred from his doing the prohibited acts did not in fact exist." Then, again:—"In *Reg. v. Marsh (k)* . . . the Judges held that there was sufficient *prima facie* evidence, and that it was not rebutted by the defendant by sufficient proof on his part of the ignorance suggested on his behalf. The judgments clearly import that if the defendant could have satisfied the jury of his ignorance it would have been a defence, though the word 'knowingly' was not in the Statute." And again, at p. 733:—"What reason is there why in like manner a criminal mind or *mens rea* must not be ultimately found by the jury in order to justify a conviction, the distinction always being observed that in some cases the proof of the committal of the acts may *prima facie*,

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either by reason of their own nature or by reason of the form of the Statute, import the *mens rea*? But even in these cases it is open to the prisoner to rebut the *prima facie* evidence, so that if in the end the jury are satisfied that there was no criminal mind, no *mens rea*, there cannot be a conviction in England for that which by the law is considered to be a crime."

So that I think, having regard to these authorities, that, notwithstanding that the Act makes the thing done an offence, the law allows us to consider whether, having regard to the character of the Statute and all the other considerations, that defence is open to an accused person. It is quite clear that there are certain cases in which, from the form of the Statute and the other considerations mentioned, it is no use saying "He did not know he was doing wrong." I need not refer to those cases in detail; there are instances of various kinds, and the strongest appears to be that of receiving lunatics into a house: *Reg. v. Bishop* (l).

Then, feeling that the law requires us to enter on that consideration, what view should we take as to the propriety of conforming to the trend of the English decisions, by allowing the accused in this case to obtain a verdict of acquittal by proving facts that satisfy a jury that his mind was innocent? It may be rightly said that this thing was made an offence for the protection of the revenue, and it is to be remembered that this particular offence under sub-sec. (a) is associated with offences under sub-secs. (b) and (c), and that the severity and absence of escape which would attend one should attend all. We find in collocation with sub-sec (a) "obtains any maternity allowance which is not payable," sub-sec. (b) "presents to the Commissioner or to any officer doing duty in relation to this Act or the regulations any statement . . . false in any particular." This Act is not an Act which in itself contains the regulations which specify the conditions necessary to the obtaining of the allowance, but it is left—procedure and all—to the Governor in Council and regulations which he may thereafter make. It would therefore, as it seems to me, be opposed to the view in which Acts of this sort are generally regarded to say that the Legislature, in framing this Act, meant to say that, whatever may be contained in these regulations, however trivial may be the departure from their terms, apart from all guilty knowledge a person shall be subject to indictment and imprisonment for one

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year—all for a contravention, innocent on his part, of this sec. 10. Of course, it may be said that as against this apparent severity there is the leniency which a Judge might and would show where the absence of all improper intention was proved to the satisfaction of the jury. That, however, is not a sufficient answer; it still leaves the fact that the accused will have been rightly convicted of an indictable offence, involving as it does very serious consequences. So I think it would be going beyond the cases that have been decided on Statutes of this kind—it would be a more extreme case than any decided—to say that the Legislature intended to say that, whatever might be the state of your mind, if you make a misleading statement in some most trivial particular you are necessarily, when that is proved, guilty. I think the whole reason of the rule is that the Legislature did not intend to exclude a defence which in other cases of the same general character would be admissible, and therefore we are agreed that the answer to the third question, which runs thus—“Having regard to the findings of the jury, could a verdict of guilty be properly entered in respect of any and which of the charges?”—is “No.”

Hood, J., read the following judgment:—This defendant has violated the letter of sec. 10 of the *Maternity Allowance Act*, but has done so without being aware that he was obtaining an allowance which was not payable. That is to say, he has acted without any guilty intent, and the main question is whether in these circumstances a verdict of guilty of any offence can be entered against him. In my opinion, that question should be answered in the negative. Undoubtedly the Legislature can, and sometimes does, enact that a person may be punished as a criminal for innocently violating statutory provisions. But the general rule is well known—“There is a presumption that *mens rea*—a knowledge of the facts which render the act unlawful—is an essential ingredient in every criminal offence. That presumption, however, is liable to be displaced by the words of the Statute creating the offence, or by the subject-matter with which it deals”: *Joppin v. Marcus* (m). This is an adoption of the language of Wright, J.—*Sherras v. De Rutzen* (n)—who, after laying down the general principle, refers to the exceptions, which he calls “isolated and extreme

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(m) [1908] Ir. Rep., at p. 425, per (n) [1895] 1 Q.B., at p. 921.

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cases." He states that these exceptions may be reduced to three classes. The first includes acts that are not criminal in any real sense, but are prohibited under a penalty in the public interest, such as offences against the *Revenue Acts*, *Adulteration Acts* and *Game Acts*, and Acts against reception of lunatics. The second class comprehends public nuisances. The third are those in which, though the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right. This decision is cited by the Privy Council—*Bank of New South Wales v. Piper* (o)—and by Farwell, L.J., in the Court of Appeal—*Hobbs v. Winchester* (p)—and has never been disapproved of. It was urged that in the last-mentioned case, Kennedy, L.J., had expressed an opinion that the presumption of *mens rea* does not exist in construing a modern Statute. His Lordship in that decision quoted with approval the remarks of Stephen, J.—*Cundy v. Le Cocq* (q)—and I gather from that reference that the real meaning of his remarks is that the presumption as to *mens rea* is displaced in modern Statutes owing to their greater precision. This view, of course, is quite consistent with the authorities to which I have referred, and with *R. v. Tolson* (r), where Wills, J., said:—"Although *prima facie* and as a general rule there must be a mind at fault before there can be a crime, it is not an infallible rule, and a Statute may relate to such a subject-matter, and may be so framed, as to make an act criminal whether there has been any intention to break the law, or otherwise to do wrong, or not." The real test is the construction of the particular Statute, and on this matter the decisions are numerous. The cases relating to abduction which were cited do not seem to me to be in point, because there was in those cases the knowledge in the prisoner's mind that he was doing wrong, though owing to ignorance as to the girl's age he was not aware that his act was punishable, and it is remarkable, even in these cases, how the doctrine of *mens rea* permeates the judgments: See *R. v. Prince* (s) and *R. v. Tolson* (t).

Turning now to the provisions of the *Maternity Allowance Act*—do these relate to such a subject-matter, or are they so framed, as to make an act criminal where there has been no intention to

(o) [1897] A.C. 383.

(p) [1910] 2 K.B., at p. 482.

(q) [1884] 13 Q.B.D. 207.

(r) [1889] 23 Q.B.D. 168.

(s) [1875] L.R. 2 C.C.R., at p. 175.

(t) [1889] 23 Q.B.D., at pp. 179

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break the law? The subject-matter of the Act is the granting of a bonus on the birth of a child, and the clauses in question are intended to punish fraud. I do not think that the Legislature contemplated innocent mistake, for the fact that a child is born is not one about which those concerned in the bonus could make any error. But fraud there may be, and that, I think, is what Parliament desired to prevent. There is no public interest involved in the prosecution of infractions of this Act, any more than in the case of every other public Statute—*e.g.*, the section of the *Crimes Act* relating to bigamy: See *R. v. Tolson* (*supra*), *R. v. McMahon* (*u*); *R. v. Adams* (*v*). These provisions in this Act really aim at punishing the offence of obtaining money by false pretences, and this does not become a matter of public interest simply because the public purse may be defrauded. Nor does the Statute fall within either of the other classes defined above. Again, there is nothing in the frame of the legislation that leads to the conclusion that an innocent act is to be punished because there are no other sections to contrast with those in question, as was the case in *Stephens v. Reid* (*w*), and most of the other authorities relied on. On the contrary, the wording of sec. 11 tends to support the view that guilty knowledge is necessary. That section relates to accessories, and in portion, if not in the whole, requires knowledge. If sec. 10 is not limited in the same way, the startling result would follow that a principal might be convicted while innocent of all intentional wrong-doing, while the person directly concerned in the commission of the offence could not be challenged unless he acted knowingly. The penalty is also an element. I know that it has been said that the punishment is a matter for the Court; but where, as here, the offence is punishable by indictment, and a conviction is followed necessarily by a deprivation of electoral rights, it seems to me an element to be considered. "Few, if any, such enactments relate to indictable offences, and usually they prohibit certain acts in the interests of the public revenue or private property": *Russell on Crimes* (7th ed.), 101.

The next matter is whether the offence with which the defendant was charged is an indictable one, and in my opinion it is. It is an offence for which a punishment may be imposed of im-

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(u) [1891] 17 V.L.R. 335.

(v) [1892] 18 V.L.R. 566.

(w) [1902] 28 V.L.R. 82.

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prisonment for a period exceeding six months, and as there is no contrary intention appearing in the Act, it is by sec 4 of the *Commonwealth Acts Interpretation Act 1904* an indictable offence.

Nothing was said in argument in reference to the remaining question, and there appears to be no difficulty about it.

I therefore answer the questions reserved thus—1. This offence under sec. 10 of the *Maternity Allowance Act* is triable as an indictable offence. 2. Those facts ought to have had no effect on the trial, nor do they affect the verdict. 3. No.

CUSSEN, J., read the following judgment:—In this case three points were reserved for consideration. As to the first, I am of opinion that offences under the *Maternity Allowance Act*, sec. 10, are indictable offences. The second point was not relied upon, but the third was discussed at some length. So far as concerns the offences charged other than the first two, the accused was, I think, entitled to acquittal by reason of the fact that he was not (by the omission found), knowingly concerned in the commission of an offence. This leaves for consideration only those two cases in which the accused obtained sums of five pounds, purporting to represent maternity allowances, which were not in fact payable. With respect to these cases, having read the judgment of my brother Hood, I do not think it is necessary to refer at any length to the authorities, but I am of opinion that the accused is entitled to be acquitted, because—(1) According to the findings of the jury, he must be taken to have honestly and reasonably believed in the existence of circumstances which if they had really existed would have made his acts entirely innocent; and (2) I cannot find sufficient in the Statute creating these offences to exclude the application of the facts first stated as an exculpation: See *R. v. Tolston* (x); *R. v. Ewart* (y); *Hardgrave v. The King* (z); and compare *Gleeson v. Hobson* (a), and the cases there cited.

I think some of the cases which at first sight seem to tell against my conclusion may be distinguished, either on the ground that the Statute, in dealing generally with the subject-matter, shows an intention in the Legislature impersonally to prohibit certain

(x) [1889] 23 Q.B.D. 168, particularly per Cave, J., at p. 181.  
 (y) [1905] 25 N.Z. L.R. 709.

(z) [1906] 4 C.L.R., at p. 237.

(a) [1907] V.L.R., at p. 156 *et seq.*

acts being done, the section creating the offence merely showing the penalty for violating that prohibition, or on the ground that what was done could not be innocent, or on the ground that the offence was punishable summarily by a penalty comparatively small, or on some combination of these grounds. In this case the offence was indictable; what was done might be quite innocent, and secs. 10 and 11, creating offences, stand in a sense apart from the rest of the Act. We must construe the Act apart from the practice as to the mode of obtaining maternity allowances which has grown up under it, and this supports the view suggested by Hood, J., that the Legislature would not be contemplating innocent mistake, at all events by a mother, though a closer examination shows that a person authorized in writing by the mother, under sec. 8, might, in addition to cases such as are suggested by this case, easily be under a mistake as to the place of birth (sec. 4), as to the title of the claimant (sec. 6), or possibly as to the allowance having been already paid. In some of these cases it seems unlikely that the Legislature could have intended to punish a person who was really innocent of anything wrong, and this consideration is strengthened when one remembers that many claims would be made by poor and ignorant people, who might easily make an innocent slip. It would not be difficult to draft clauses providing for some lesser penalty, and possibly providing some exemptions to meet such cases; but, on the whole, I think the Legislature did not intend by sec. 10 (a) to punish an act which in the belief of the accused was wholly innocent.

I agree with the view indicated by A'Beckett, J., that the Crown need not aver or prove in a charge under sec. 10 (a) anything more than that the accused did in fact obtain a maternity allowance which was not payable.

*Questions answered in favour of accused.*

Solicitor for the Crown : *Guinness*, Crown Solicitor.

Solicitors for the prisoner : *McInerney*, *McInerney & Wingrove*.

W. S. S.

[On the 10th March 1914 the High Court of Australia refused leave to appeal in the above case.]

F.C.

1914

THE KING  
v.  
ERSON.

*Cussen, J.*