

1893

Jurisdiction in Criminal Cases

Frank Wilson Knapp
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses



Part of the [Law Commons](#)

Recommended Citation

Knapp, Frank Wilson, "Jurisdiction in Criminal Cases" (1893). *Historical Theses and Dissertations Collection*. Paper 215.

This Thesis is brought to you for free and open access by the Historical Cornell Law School at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Historical Theses and Dissertations Collection by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

J U R I S D I C T I O N

I N

C R I M I N A L C A S E S .

-----ooOoo-----

G R A D U A T I N G T H E S I S

----- OF -----

F R A N K W I L S O N K N A P P

-----ooOoo-----

C L A S S O F ' 9 3 .

C O R N E L L U N I V E R S I T Y

L A W S C H O O L

J U R I S D I C T I O N I N C R I M I N A L C A S E S .

The question of criminal jurisdiction is one of growing importance from the fact that a citizen of our State can be seriously affected in his property rights, or even have his life put in jeopardy, by the act of another living a thousand miles away, and in any one of fifty or more sovereignties. If a citizen of the United States is killed by an explosive compound sent by a citizen of Russia with an intent to work that result in this country, it is a question of importance in which country the guilty offender shall be punished. If a citizen of New York goes over into Pennsylvania for the purpose of evading the laws of this State and then returning, , it is a question of the utmost concern as to which state shall have jurisdiction, or whether the guilty party shall escape punishment entirely.

I shall treat the subject, first, briefly from an international standpoint; second, as to the jurisdiction of the United States Courts; and, lastly, as between the several States of the Union.

It is a well established and fundamental principle of criminal law in all civilized countries that crimes are altogether local and cognizable and punishable only in the place where they are committed. Lord Longborough maintained

this view in the case of *Folliot v Ogden*, 1 H. Bl. 135. On a writ of error in the same case, Mr. Justice Buller said: "It is a general principle that the penal laws of one country cannot be taken notice of in another." Lord Ellenborough confirmed this view in *Warrender v Warrender*, 9 Bligh 119. The same doctrine is firmly rooted in the jurisprudence of America. Chief Justice Marshall in the case of *The Antelope*, 10 Wheat. 66, in delivering the opinion of the court, said:

"The courts of no country execute the penal laws of another." And Chief Justice Spencer in *Scoville v Confield*, 14 Johns.

338, concurred in this view when he said: "The penal acts of one state can have no operation in another state. They are strictly local, and affect nothing more than they can reach."

This doctrine seemed to have its origin in a rude personification of crime, and in the belief that it could only be avenged in the place where the crime was committed.. Its force can be traced in that provision of the Constitution of the United States, Amendment VI, which reads: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." But from the fact that some places on the earth's surface are not

within the territorial jurisdiction of any country, and that some nations have not reached that degree of civilization that would entitle them to be recognized as belonging to the family of nations, and in other cases from prudential reasons, there are some apparent exceptions to this general proposition which we will proceed to notice.

First, from an international standpoint.-- For a long time offences committed on the high seas and in barbarous lands went unpunished, as there were no courts at the place of the crime to take cognizance of the offence. It is recorded that even during the sixteenth and seventeenth centuries buccaneers roamed the high seas, and brought unchallenged and unmolested into English ports spoils which they had taken from merchant vessels of other nations in times of peace. But these unjust and piratical seizures were made the subject of a statute under the reign of Henry VIII, whereby offences committed on the high seas and in barbarous lands were made punishable in England. And it is now well settled that an act committed on a public vessel on the high seas, whatever the nationality, is punishable in the state to which the ship belongs, and if a private vessel, then each state has control of its citizens on board, and can punish them for the crime there committed, or can yield jurisdiction to the state wherein the owners have citizenship.

These offences on the high seas can be conveniently grouped into three classes: First, those committed on ship-board, and punishable in the country of the flag; second, piracies committed outside the territorial limits of any sovereign are by the law of nations punishable in any civilized country; third, those committed on the territorial waters of a particular state while on board the vessel of another state. In regard to the third class, previous to 1876 both nations were assumed to have concurrent jurisdiction, but since then the question has been much discussed, and is still in dispute. The only rule in France is that they will not assert their police power to punish crimes on foreign merchant vessels within their waters unless invoked by those on board, or unless liable to create some disturbance in their parts. So far as the law is settled in this regard it seems to be that every nation has the right to enact such laws as she sees fit in regard to regulating those on board her vessels in foreign parts. And at the same time they must respect the laws of the country to which the port belongs and within whose jurisdiction they are.

As to offences committed in barbarous or semi-civilized lands against the citizen of a civilized state, they are cognizable in the courts of the offended state, unless by treaty stipulations between them the consuls are given ju-

dicial power to punish citizens of the country from which the consul is sent for crimes committed in the foreign land. By the Revised Statutes of the United States, #4084, in pursuance of treaties with China, Japan, Siam, Egypt, and Madagascar, our consuls there are fully empowered to arrange in the manner provided all citizens of the United States charged with offences against law committed in such countries. And by #4088 this jurisdiction is claimed over islands or countries not inhabited by any civilized country or recognized by any treaty, and this extra-territorial jurisdiction over its citizens is assumed without treaty authorization.

We next come to the question of the jurisdiction of one country over the citizens of another within the border of the first named country. It is a well settled rule of international law that offences against government, or which involve the security and safety of the state, such as treason, perjury before consuls, and forgery of government securities, are justiciable in the country to which the offender owes citizenship, no matter where the act is committed. It is equally well established that it cannot invade the territory of another state for the purpose of arresting the offender, but it can demand extradition of him if treaty stipulations provide for the same, though the state in which he is at the time has concurrent jurisdiction. England goes further than this and

claims jurisdiction of its citizens for homicide committed in foreign countries. But for political offences it is generally accepted that no country will punish except the ^{one} ~~case~~ of-
fended, and for ordinary crimes and misdemeanors committed by a citizen of one country while within the territory of another, the courts of the latter country have jurisdiction the same as if committed by one of their own citizens.

As to forgery of government securities, it would work a great failure of justice to say that a citizen of the United States could go over into Mexico and there issue forged paper, and then come safely back into the United States and dispose of the same, and not be liable to punishment here. It would not only bring our government into contempt, but it would expose us to spoliation. A like injurious effect would result to our government and citizens, were perjury before consuls abroad to be left to the foreign jurisdiction for punishment.

As to offenses committed by a party acting abroad through a domestic agent, or through infra-territorial mechanical agencies, the same rules should apply as between the different states of this country, and the question will be considered in that connection.

Next comes the jurisdiction of the United States courts in criminal matters. Early in the present century, it

was decided that there were no common law offences against the United States. Even in 1807 Chief Justice Marshall in *Ex parte Bollman*, 4 Cranch 75, said: "This court disclaims all jurisdiction not given by the Constitution or the laws of the United States. Courts which originate in the common law possess a jurisdiction which must be regulated by the common law until some statute shall change their established principles; but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction." This doctrine, that had long been settled in the public mind, was definitely decided by the United States Supreme Court in *United States v Hudson*, 7 Cranch 32. The United States government has such powers and only such powers as are delegated to it by the Constitution. By Article I, Section 8, of that instrument congress shall have power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. In accordance with this Congress has declared that certain acts done on the high seas or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty or maritime jurisdiction of the United States, and without the jurisdiction of any particular state, shall be crimes against the United States and punishable in its courts. Whether this grant of power to the courts by Congress includes acts committed on the Great

Lakes has never been satisfactorily determined. It was thought by Justice Brown in *Ex parte Byers*, 32 Fed. Rep. 404, 410, that the State courts had exclusive jurisdiction of crimes committed on the American side of the boundary line of the Great Lakes and their connecting waters, and that the Federal courts had no jurisdiction of crimes committed on the American side of the waters, as they were clearly not within the meaning of Congress when it said high seas or any other arm of the sea, or in any river, haven, basin, or creek.

It is also provided by the Constitution, Section 3, Article IV, that Congress shall have power over all the territory or property belonging to the United States, and over all places purchased by consent of the legislatures of the States in which the same shall be for the erection of forts, arsenals, dock-yards, and other needful buildings. This provision was the cause of much litigation until the matter was finally decided in *Clay v State*, 4 Kan. 49, and *The People v Godfrey*, 17 Johns. 225. In the latter case a crime was committed within the boundary of Fort Niagara, and it was held that the United States courts had no jurisdiction of the crime, as no cession of such place had ever been made by the State to the national government, though that government had had control of the fort ever since the British had surrendered dominion of the same. The controlling principle seems to be that where the place is within the boundary of a State, and

it has not been expressly excepted in the act admitting the State into the Union, and where there has been no cession of such place to the United States Government, then the State and not the Federal courts have jurisdiction.

We will now consider how far the doctrine of extra-territoriality has been extended as between the different States of the American Union. It would seem that here the utmost liberality could be shown in this matter, from the similarity of conditions in the different States, and the generally prevailing public sentiment that no crime shall go unpunished wherever committed. It is a universal doctrine that each State possesses power to provide for the punishment of offences within its own limits, except such as the National Constitution confers on the Federal Government. But at the same time it cannot provide by legislation for the punishment as crimes of acts committed beyond the State boundary, because such acts if offences at all are offences against the sovereignty within whose limits they are committed. However it is not necessary that the offender be corporally within the State when the guilty act is done. Even when without the limits of the State, if he is the agent or instrument through whose unlawful acts consequences result that are injurious to the State, then it seems that the offender can be punished as offender against such State. *Barkhurst v Parsons*, 3 Conn.

People v Adams, 3 Denio 190, 210. It is as to the extent and limitations of this doctrine that disputes have arisen between the different States. In an early case in Massachusetts, Commonwealth v Green, 17 Mass. 540, the question was considered whether a conviction for felony in one State would have any effect in preventing the convicted person from testifying in another State. It was claimed by those endeavoring to prevent this testimony from being given, that it came within the provision of the United States Constitution that "every State shall give due force and credit to judgments obtained in other States," and as the judgment of felony prevented the testimony from being given in that State, the Constitution prevented its being given in any other State. But the testimony was admitted, the court holding that the clause in the Constitution applied only in civil cases, and that no State could give effect to a criminal judgment in another State. This question is no longer of importance, as the jury are now allowed in most if not all of the States to weigh for what it is worth the evidence of one who has been convicted of felony even in that State.

As to larceny when the goods are stolen in one county or State and carried by the thief into another county or State, it is now universally admitted that the offense can be punished in any county where the stolen goods are found,

not that the offence was committed and completed in the place where the goods were taken, but that the offense is ^{extended} ~~denied~~ to continue and hang over the offender in every county into which the stolen goods are brought. This was even true at common law when the goods were taken from one county in England to another, but not when brought from a foreign country, or even when brought from Scotland or Ireland, in the absence of statute. Some early cases in this country hold with the English view, that the indictment could only be in the State where the goods were stolen, that the States were foreign to each other in this regard; but the later cases hold that the thief can be indicted in any State in which he takes the goods. *Hamilton v State*, 11 O. 435. *State v Burnett*, 14 Iowa 482. *Commonwealth v White*, 123 Mass. 433. A number of states, as Massachusetts, Connecticut, North Carolina, Maryland, Kentucky, Mississippi, Missouri, Iowa, Oregon, and Ohio, have claimed this right of jurisdiction when stolen goods were brought within those States, even in the absence of statutory authority. In other States the right has been held not to exist in the absence of statutory provision when the goods are brought from some foreign country. *Commonwealth v Uprichard*, 3 Gray 434. But this has been decided the other way in the case of *The State v Bartlett*, 11 Vt. 65, where an indictment was held to lie in Vermont for oxen stolen in Canada,

and brought into that State, and this case is upheld in The State v Underwood, 49 Me. 181. In other States statutes have been passed making the offence indictable here when goods are brought from a foreign country, and such statutes have been held constitutional. People v Burke, 11 Wend. 129. In Michigan, the statute, which reads "stolen in any other State or country," was held constitutional in People v Williams, 24 Mich. 157, where the goods were stolen in Louisiana and brought into Michigan. Judge Cooley, writing the opinion of the court, said: "Now it may be true that this would not have been an offense at common law, but that does not prevent its being made so by statute." But in another Michigan case,--Morrisey v People, 11 Mich. 327,--where the larceny was in Canada and goods brought into Michigan, the same court was equally divided as to the constitutionality of the act. This question is well considered in a Massachusetts case,--Commonwealth v Uprichard, supra,--decided in 1855, where a thief who had stolen goods in Nova Scotia and brought them into that State was held not indictable there. The judge tried to establish a different principle from that when the goods are brought from a sister State of the Union. The judge says: "This case proceeds on the ground that the goods were actually stolen in this State. It is only by assuming that bringing stolen goods into this State from a foreign country makes the act larceny

here, that their allegations can be sustained, and this involves the necessity of going to the law of Nova Scotia to ascertain whether the act done was felonious, and consequently whether the goods were stolen. So it is by the combined operation of the force of both laws that it is made felony here. It is said they commit a new theft by the possession of stolen goods in our jurisdiction. But what are stolen goods? Are we to look to our own law or to the law of Nova Scotia to determine? If Nova Scotia law is different from ours, then we may be called on to punish as a crime that which is innocent here. If we look to our law, then a taking and carrying of goods in Nova Scotia under circumstances which would not be criminal there might be punishable here. If they can be indicted and punished here on the ground that such goods were stolen where they were brought in, it seems difficult to distinguish this from judicially enforcing and carrying into effect the penal laws of another government." In *State v Underwood*, 49 Me. 181, the court arrived at an opposite conclusion from an exactly similar state of facts, three judges dissenting. The justice writing the opinion in the case takes occasion to refer to the Massachusetts case above cited, and considers the reasoning of Judge Shaw in that case not well founded when he draws a distinction between a sister State of this Union and a foreign country, from the

fact that the different States are as sovereign and as independent in their administration of criminal law as they are in their relation with foreign governments. The laws of the foreign country are not included among the elements which constitute the crime for which the defendants were indicted. Whether they were guilty of stealing the goods must be first determined according to our laws concerning larceny, and if they were thus guilty, then the guilty possession of the goods here was larceny here. As larceny is not an extraditable crime with England, if Massachusetts doctrine prevailed then thieves might steal with impunity in Canada, and the border States of this Country would become a refuge for them. In neither Maine nor Massachusetts was there any statute on this subject when these decisions were rendered. From the tendency of the decisions, then, I think it can be safely concluded that an indictment for larceny will lie in any county or State where the stolen goods are brought from another county or State, and generally so held even in the absence of a statute. When brought from a foreign country a few States hold that the crime is not indictable here, though there seems to be no substantial reason why this distinction should be made.

The next class of cases is that by which a resident of one State by means of false pretences through an innocent agent in another State, or by means of forged checks or drafts

sent into another State, succeeds in obtaining money in the latter State. In *Adams v People*, 1 N. Y. 173, a resident of Ohio obtained money in New York through the representation of an innocent agent residing here. The defendant was held liable and within the jurisdiction of New York, though never within the State. The theory on which these cases are decided is that the crime is not consummated until the goods are obtained. If the act had been complete when he procured the agent to act, then Ohio law alone could punish. So if a man in Michigan draws a forged check on a bank in New York, and sends it here, the crime is not consummated until the check is received, and hence punishable in the latter place. *People v Rathbun*, 1 Wend. 509. *Lindsey v The State*, 38 O. St. 509.

Where an accessory before the fact is outside the jurisdiction where the crime is committed, the weight of authority seems to be that the accessory can only be punished where his guilty act took place. *State v Chapin*, 7 Ark. 561. *State v Wyckoff*, 31 N. J. L. 65. *John v State*, 19 Ind. 421. *State v Moore*, 26 N. H. 448. These cases proceed on the principle that the guilty act is completed in the State where the act of aiding or abetting is done, and hence punishable there, while the guilty agent, who is the principal, is punishable in the State where the act is committed. The courts of Connecticut take a decided stand the other way, as expressed in the

case of *The State v Grady*, 34 Conn. 178., where Grady conspired with certain accomplices in the City of New York to commit the crime of larceny in Connecticut. The defense was that the Connecticut ^{courts} had no jurisdiction to try those who participated in the plot in New York. The court says: "The general proposition that no man is to suffer criminally for that done outside the jurisdiction applies only when the act is completed outside the country. It is the highest injustice that a man should be protected from doing a criminal act because he is personally out of the State. The doctrine is that as an accessory he must be pursued in the locality where he committed the enticement, but this has never been recognized in this State; is inconsistent with our system of criminal law, and does not commend itself to our judgment; that the doctrine originated as Bishop says in the blunder of some judge, and that it is vicious and inapplicable in this country." These cases are to be distinguished from those wherein the agent is an innocent party, and it is to be noted that although an accessory before the fact is now punishable as a principal in most of the States, the same rules apply as when the technical term was used.

There has been much difference of opinion in the courts of this country as to which county or State has jurisdiction when a mortal blow is struck in one county or State

and death ensues in another. It is now well settled by the weight of authority that where the blow is given in one county and death results in another county in same State, that the offense is committed where the blow is given. *State v Gassert*, 21 Minn. 369. *State v Bowen*, 16 Kansas 475. *Riley v State*, 9 Humph. 646. *U. S. v Guiteau*, 1 Mackey 498. *Green v State*, 36 Ala. 40.

However statutes have been upheld in some States making the act punishable in either State, and some of the States have enacted that where death occurs within the State from a mortal wound given, or other violence or injury inflicted, without the State, that the offence is triable in the State where death occurs. *Tyler v People*, 8 Mich. 320.

Commonwealth v Macloon, 101 Mass. 1. The last case gives an exhaustive review of the authorities, English and American, and arrives at the conclusion that the statutes giving jurisdiction where death occurs are constitutional, and strongly intimates that the same would be true even in the absence of statute. But the more logical view when no statute intervenes, and the one better sustained by the authorities to-day, is found in the opinion of the judge in *The State v Bowen*, 6 Kan. 475. He says: "It seems to us reasonable to hold that as the only act the defendant does toward causing the death is in giving the fatal blow, the place where he does it is the

place where he commits the crime, and that the subsequent wanderings of the injured party uninfluenced by the defendant do not give an ambulatory character to the crime, at least that those movements do not, unless under express warrant of statute, change the place of offence; and while it may be true that the crime is not completed until death, yet that death simply determines the character of the crime committed in giving the blow, and refers back and modifies that act."

Where place of death has jurisdiction, it is not because it is regarded as having been committed there, but because some rule of law, statutory or otherwise, confers jurisdiction. The modern and more rational view is that the crime is committed where the unlawful act is done.

Another class of cases somewhat similar to those already noticed is where one without the State does an act to take effect within the State, as when one fires a gun, or sends a poisonous compound, or an explosive package, or diverts or swells the course of a stream, or publishes a libellous letter, any one of which is to produce its ultimate and injurious result, not where the perpetrator was, but where the act took effect. In all these cases the act was committed and punishment should be had where the criminal act took effect. It was not completed in any other jurisdiction, and the evidence and effect of the crime committed can both be inquired

into where the act was consummated. For authorities on this point see *Stillman v White Rock Co.*, 3 Wood & M. 538; *Commonwealth v Blanding*, 3 Pick. 304; *Commonwealth v Smith*, 11 Allen 243; *Commonwealth v Macloon*, 101 Mass. 1; *People v Adams*, 3 Denio 190; *R. v Garrett*, 6 Cox 280; *Robbin v State*, 8 Ohio St. 131.

A concurrent jurisdiction is sometimes held to exist in the country where the act or conspiracy is planned. *Wharton's Criminal Law*, Vol. I, §§279, 288.

It would seem that when the act is done in a foreign country and takes effect in this country the same rules are applicable, though the offender is not personally amenable to our laws till he comes within their jurisdiction. *R. v Marley*, 1 Cox 104; *R. v James*, 4 Cox 198.

It has come to be a question of considerable importance whether a State can punish for the crime of bigamy where the second marriage took place in another jurisdiction. In the absence of a statute giving a State jurisdiction for an extra-territorial crime we know of no decision holding that the State has power to punish for the bigamy committed in another State. This question is carefully considered in the case of *Dickson v Dickson*, 24 Am. Dec. 444, where a woman married in Kentucky, and afterwards abandoned her husband, and he obtained a divorce, and she was forbidden to marry

again. She soon afterwards went over into Tennessee and married Dickson who soon died, and she claimed dower which was resisted by the heirs. The case came up in Tennessee, and the judge in his opinion said: "Had she come into this State and married Dickson before divorce, she would have been guilty of bigamy, for it mattered not where the first marriage took place, if legal in the country where solemnized, second marriage in Tennessee would be bigamous. I have endeavored to find some legal principle that would avoid the second marriage, but I am unable to do so. She was freed from all married relations in Kentucky, but subject to all the pains and penalties as to bigamy as if former marriage was still good; but the State of Kentucky cannot complain because her penal~~ty~~ laws cannot extend beyond her own territorial jurisdiction. Not punishable in Tennessee, because no Tennessee law has been violated. Not for bigamy in Tennessee, because no former husband living. No principle of comity among neighboring States can be extended to give force and effect to the penal laws of one society extra-territorial to the other, and for many reasons it would be equally inconvenient, not to say impracticable, to adopt the principle among sister States of the American Union, for which this court has the conclusive authority of the United States Supreme Court." *Houston v Moore*, 5 Wheat. 68; *Earthmore v Jones*, 2 Yerger 486.

Two cases in New York illustrate the same principle. In *Van Voorhis v Brintnall*, 86 N. Y. 18, a marriage between A and B had been dissolved on account of the adultery of B, the husband, and he was forbidden to marry again. Then B. and C, she also living in this State, went over into Connecticut and were married, and returned at once to this State. The second marriage was held valid, and the children of their marriage would share with those of the first in a devise. The judge says: "Examples of legislation are not wanting making an act committed out of the State punishable within the State by special provision of law. Such is our law against duelling and stolen goods. But in the very next section on bigamy there is no such enlargement of the statute. Why expressly charged in duelling laws, etc., if it could be applied in other cases?" The same principle is applied in *Thorp v Thorp*, 90 N. Y. 602. The law seeming to be thus settled where no statute controls, we will next consider the effect of statutes making bigamy punishable whenever the guilty one is apprehended in the State, no matter where the bigamous act was committed. This question arose in *Wells v The State*, 32 Ark. 563, under a statute of that State which reads: "An indictment may be found against a person for a second marriage in any county in which such person may be apprehended, and like proceedings had as if the offense had been committed therein, the venue being immaterial.

The court says: "The legislature has no more power to provide that a man be indicted for bigamy in any county in which he may be apprehended, regardless of the county in which the offense may have been committed, than it has to make a like provision as to murder or any other crime. The constitutional provision is the paramount law and cannot be disregarded."

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed."

A similar statute in England would have been within the power of Parliament, because Parliament is not limited by written constitution as legislatures are in this country."

A similar conclusion was reached in the case of The State v Cutshall, 15 S. E. 261, a N. C. case, wherein the statute reads that "if any person being married shall marry any other person during the life time of the former husband or wife, whether the second marriage shall have taken place in North Carolina or elsewhere, every such offender shall be guilty of a felony, and every such offense may be punished in the county where the offender shall be apprehended as if actually committed there." This statute was declared unconstitutional by the highest court of that State, as denying a right of trial by a jury of the ^{vicinage} ~~marriage~~ in all cases which were so triable at common law, and in violation of the provi-

sion that no person shall be imprisoned or disseized of his liberties but by the law of the land. The statute, as will be seen by its terms, applies as well to a citizen of another State who in transit through the State affords an opportunity to the local authorities to apprehend him, as to those who become domiciled within its borders; and this attempt to evade the organic law of the land, which guaranties to citizens of all the States the privileges and immunities of the citizens of the several States, and which under the inter-state commerce clause gives them the right to pass through any State without arrest and inquiry into their accountability for offences against another sovereignty, is too palpable a violation of fundamental rights to be sanctioned by any court. Even if the citizen went over into South Carolina, and married with intent to evade the laws of North Carolina, and immediately returned to that State, the law of the latter State cannot punish, for the bigamous act was fully and completely committed in another State, and could by the organic law of the State and nation only be tried there by a jury of the vicinage. Had the statute been limited to persons within the State who have a husband or wife living, and who shall marry another person without the State, and shall afterwards cohabit with such person within the State, and making the felony consist not in the bigamous marriage in another State, but in the con-

tinuous cohabiting within the State, then it would have been clearly constitutional as providing for a crime committed within the State. This latter view has been maintained in *Commonwealth v Bradley*, 2 Cush. 553; *Bremer v State*, 59 Ala. 102; *State v Palmer*, 18 Vt. 570; *State v Fitzgerald*, 75 Mo. 571. As expressed in *Bremer v State*, *supra*, "Our statute on this subject covers two crimes; one of them, the offense of bigamy, can be punished only where the unlawful marriage is solemnized; the other is complete and punishable in any county in which the parties continue to cohabit afterwards."

The statute in New York is broad and general in its terms, and it has not yet been decided whether it includes the act of continuous cohabitation in this State after a second marriage in another State, the first husband or wife being still living, and no divorce having been obtained by either party. Where a divorce has been granted and one party has been forbidden to marry again, it has been decided in two comparatively recent cases that the party so forbidden can go over into another State and re-marry, and return at once to this State without fear of conviction. *Van Voorhis v Brintnall*, 86 N. Y. 18; *Thorp v Thorp*, 90 N. Y. 602.

The statute in New York,--Section 676 of Penal Code is as follows: "A person who commits an act without this State which affects persons or property within this State, or

if committed within this State would be a crime, is punishable as if the act were committed within this State." In view of The decisions in the two cases above mentioned, it is extremely doubtful whether it was within the intention of the legislature to make punishable by this Statute acts of continuous habitation here, when the second marriage was in another State even though there had been no divorce from the first marriage. Statutes extending the penal jurisdiction of a State are to be strictly construed, and are to cover nothing more than their terms clearly import. As Chief Justice Marshall says in *United States v Fisher*, 2 Cranch 389: "Where rights are infringed, where the general systems of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to support a design to effect such object."

In all these cases of conflicting jurisdiction, State, national, or international, the question of extradition is closely connected with that of extra-territoriality. Whether a State should extradite an accused person, or retain and punish him for a crime committed outside its jurisdiction, or allow him to remain in the State unpunished, will depend on the nature of the crime, the proximity of the one State to the other, and the degree of civilization in each as evidenced by the prevailing sentiment regarding the punishment of crime.

It would seem as a matter of justice and humanity that a State should either surrender a fugitive from justice, or else retain and punish him for a crime committed elsewhere if cognizable by their law, and not allow him to remain a free though guilty man, thus menacing the security of the State, and inviting crime by the easy means of escape from punishment.

In other words extra-territoriality should be the complement of extradition,--the one beginning where the other ends.

F. W. L. L. L.

