

circumstances which would prevent its being considered valid in our courts. Before the second marriage the defendant had procured a copy of this decree of divorce and had also obtained legal advice that the decree was legal and binding and that he was at liberty to marry again if he saw fit. It was argued on his behalf that these facts constituted a defence on the ground that an absence of guilty intent or mens rea was thereby established, but the Court of Appeal held otherwise. Osler, J.A., said: "Sub-section 3 (c) contains no exception in favour of a person who bonâ fide believes, or is advised, that the bond of marriage has been dissolved by a divorce; and this, with the express enactment as to what the act of bigamy consists in, is strong to shew that no such exception is to be implied, and that a valid divorce must be proved by the accused. That may well have been intended on grounds of public policy to prevent persons from setting up divorces 'while you wait,' which to common knowledge are so easily obtained in some of the courts of the neighbouring country."

III. AN ATTEMPT OR OVERT ACT.

1. *Generally.*—But intention alone is never a crime, except in treason where "the crime seems to consist in a mere state of mind," the traitorous intent is the gist. But even here some "overt act" is necessary. (Crim. Code, s. 74.)

"That in treason, just as in all other crimes, a mens rea will not constitute guilt without an actus reus, is vividly shewn by a Transatlantic decision that an American citizen who meant to join the hostile British forces, but found that he had by mistake attached himself to a party of United States troops could not be convicted of treason." *Commonwealth v. Malin*, 1 Dallas 33.

An intention to violate the law, so long as it remains in mere contemplation, is not cognizable under the criminal law; and the person so entertaining it cannot be punished by human tribunals. "No temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than they are demonstrated by outward actions, it therefore cannot punish for what it cannot