

law rule, simple and pure, was applied to the indictment under the statute the same as to an indictment at common law.

So likewise it was in the following case, which resulted differently. A statute required the masters of steamboats passing from one port to another, where a post-office is established, to deliver to the post-master in the latter place within a specified time after arrival, all letters and packets destined for the place. But it was held that if, for example, a letter is put into the hands of his clerk, or otherwise conveyed on board, yet not within his personal control, and he has no knowledge of it, this ignorance of fact will excuse the non-delivery of it to the post-master, notwithstanding the unqualified terms of the statute. Here, the reader perceives, there was an ignorance of fact which proceeded from no negligence or other culpability; and, therefore, the common-law rule, applied to the statute, screened from guilt the party who had committed a formal violation of the statutory command. "It is not to be supposed," said Johnson, J., "that it was the intention of the law-maker to inflict a penalty upon the master of a steamboat in a case where he was ignorant that a letter had been brought upon the boat, either by the clerk or any person employed on board, and had not the means of ascertaining the fact by the use of reasonable diligence. This would be little less unjust than the disreputable device of the Roman tyrant who placed his laws and edicts on high pillars, so as to prevent the people from reading them, the more effectually to ensnare and bend the people to his purposes."*

Let us now see how the doctrine is put by a court in a moment of forgetfulness of the rules of statutory interpretation. A statute in Massachusetts made it polygamy and heavily punishable "if any person who has a former husband or wife living shall marry another person," except in particular circumstances pointed out. † Does this forbid marriage after the former husband or wife is dead, in a case not within the exceptions of the statute? No one pretends that it does. Then, if a married woman has an insane delusion that her husband is dead, and, under its influence, marries another, the adjudged law in Massachusetts,

the same as elsewhere, holds her free from guilt. But is not an insane woman a "person?" Every court deems her to be. And the sophistical argument is that, as such a case as this is within the exact terms of the statute, the insane woman must be punished by the court or remitted to the governor for his pardon. The Legislature has spoken, and must be obeyed!

The answer, and the only answer to such a suggestion, is the one already given, namely, that every statute is to be construed as limited by the rules of the unwritten law; and in this case, as the woman without her own fault supposed her husband to be dead, she is to be judged on a question of crime the same as though he were so. In other words, as the unwritten law requires a criminal intent, so therefore does the statute. And an insane person can have no criminal intent.

In this condition of the law a married woman was left by her husband, who did not return, under circumstances inducing the honest belief that he was dead. So, in due time, she married another man, whom she instantly left on hearing that her husband was alive. She was indicted for polygamy, and the court held that nothing which these facts tended to prove would constitute a defence. The case differs, as we have seen, in no essential particular from one of insane delusion, in which the doctrine of the same court is directly the reverse. Said the learned judge: "It was urged in the argument that, where there is no criminal intent, there can be no guilt; and, if the former husband was honestly believed to be dead, there could be no criminal intent. The proposition stated is undoubtedly correct in a general sense, but the conclusion drawn from it in this case by no means follows. Whatever one voluntarily does, he of course intends to do. If the statute had made it criminal to do any act under particular circumstances, the party voluntarily doing that act is chargeable with the criminal intent of doing it. On this subject the law has deemed it so important to prohibit the crime of polygamy, and found it so difficult to prescribe what shall be sufficient evidence of the death of an absent person to warrant a belief of the fact, and, as the same vague evidence might create a belief in one mind and not in another, the law has also deemed it wise to fix a definite period of seven

* United States v. Beatty, Hemp. 487, 496.
 † Rev. Stat. Mass. 1836, ch. 130, sec. 2.