

It shows, I repeat, that the lawyers, in general, understand too little of this common-law subject of the interpretation of statutes to be able to discern their own needs.

Further views of this topic will appear in connection with our next, namely:

II. *Mistake of Fact as an Excuse for Crime.*—

The division of our jurisprudence into its two departments of civil and criminal reveals some marked contrasts. For example, in the civil the object is to establish what is just and expedient between private persons: hence, in various situations, one who is personally without fault is compellable to pay damages to another. On the other hand, the criminal law is for the punishment of persons who are in fault, as a means of restraining them and deterring others from evil-doing. And the universal doctrine of this department is that one whose mind is free from wrong is not to be punished. To punish such a person would be unjust, and no state can, with impunity, commit injustice. But, further than this, the proposition is, I believe, accepted among all who have reasoned on the subject that even just punishment should not be inflicted except where it may have a restraining power. Paley goes even further, without, it seems, contravening general doctrine, observing: "Punishment is an evil to which the magistrate resorts only from its being necessary to the prevention of a greater. This necessity does not exist when the end may be attained—that is, when the public may be defended from the effects of the crime—by any other expedient."*

This entire doctrine pertains to our criminal law—not to our civil—the same as it does to our public ethics and economy. In the words of Lord Kenyon, as to the former of the two propositions above, "it is a principle of natural justice, and of our law, that *actus non facit reum nisi mens sit rea*. The intent and the act must both concur to constitute the crime."† This doctrine is as familiar as it is fundamental, and authorities to it might be piled up to fill an entire number of this Review. The precise act, to be punished, need not in all cases have been specifically meant; but in all cases it must have been the product of some sort of evil in the mind. For example, a mere indifference or carelessness

where carefulness is a duty, or an intent to do one particular wrong when another follows not meant, or a voluntary incapacitating or maddening of one's self by strong drink, will, in many cases, stand in the stead of the specific criminal intent.* But without some sort of mental culpability there is no crime. If there was, another of the foregoing principles would still forbid its being punished. All that any man can do is to intend well, and to employ his faculties to the best of his ability and put forth his full exertions to prevent evil. If, in spite of all, evil unmeant comes from his act, it can restrain neither him nor any other person to punish him. Hence the state, whose will the courts expound, ought not to punish him. To illustrate:

In cities and villages where the people do not keep cows they need pure milk as much as they do in the country. Without it many an infant, and perhaps occasionally an adult, who now live with it, would die. Moreover, it is an important article of food for all classes; and he who supplies it is a benefactor. So that, in some of our states, the selling of adulterated milk is made an indictable offence. And a dealer ought to be held to a high degree of caution as to the milk he sells. But in a single instance there may be an adulteration which it is impossible he should know of or avoid, however extreme his caution may be. Suppose such an instance occurs, and the dealer is punished; if he does not leave the business, to the detriment of the public interests, the punishment can have no effect to prevent the repetition of the same thing, either by him or by any other dealer. Hence punishment should not be inflicted even if it were deserved. And when we consider, also, that it is not deserved, but is a gratuitous and wicked wrong inflicted on an innocent party, no fit word to characterize it is found in the language.

One form of the doctrine of the criminal intent is that, if a man honestly intends to obey the law, and uses due care and caution to ascertain the facts, yet is misled concerning them, then, if he does what, were the facts as he thus believes them to be, would be no violation either of the law which he intends to obey or of any other legal or social duty, he is

* Paley's Moral Phil., b. 6, ch. 9, par. 1.

† Fowler v. Padget, 7 T. R. 509, 514.

* See, for a fuller explanation, 1 Bishop's Cr. Law, 6th ed., §§ 285—355.