

1889


The Element of Locality in the Law of Criminal Jurisdiction

Henry W. Rogers

University of Michigan Law School

Available at: <https://repository.law.umich.edu/articles/1142>

Follow this and additional works at: <https://repository.law.umich.edu/articles>

 Part of the [Constitutional Law Commons](#), [Criminal Law Commons](#), [Jurisdiction Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

Rogers, Henry W. "The Element of Locality in the Law of Criminal Jurisdiction." *Am. L. Reg.* 37 (1889): 22-41.

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE ELEMENT OF LOCALITY IN THE LAW OF
CRIMINAL JURISDICTION.

THE Federal Courts have no common law criminal jurisdiction. The question was raised in the United States Circuit Court for the District of Pennsylvania, in 1798, in *United States v. Worrall*, 2 Dallas, 384, and the Court was equally divided in opinion. In 1813, Mr. Justice STORY, in *United States v. Coolidge*, 1 Gallison, 488, decided that there were common law offences against the United States. But this, as we shall see, was overruled by the Supreme Court. As early as 1807, Chief Justice MARSHALL, in *Ex parte Bollman*, 4 Cranch, 75, had said, "This Court disclaims all jurisdiction not given by the Constitution, or by 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 was a statement of general doctrine, and it remained for the Court to make an application of the principle to the matter we are discussing, in 1812, in *United States v. Hudson*, 7 Cranch, 32, where it was decided that the Courts of the United States have no common law jurisdiction in criminal cases, the Court remarking that, "although this question is brought up now for the first time to be decided by this Court, we consider it as having been long since settled in public opinion." But in 1816 the question was again presented and similarly ruled on, although it appears that a difference of opinion existed at that time among the members of the Court: *United States v. Coolidge*, 1 Wheaton, 415. Whatever doubt may, at one time, have existed on this subject, it is now settled beyond controversy, that the Federal government has no common law jurisdiction of criminal matters: *United States v. Lancaster*, 2 McLean, 431, 433 (1841); *United States v. Taylor*, 1 Hughes, 514, 518 (1874); *United States v. Shepherd*, Id. 520, 522 (1875).

The Constitution of the United States, in its first Article

and eighth section, declares that the Congress shall have power "to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations." In accordance with the power thus conferred, the government 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 and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State," shall be crimes against the United States, and punishable in its Courts: Revised Statutes of the United States, Title LXX., ch. 3. A ship on the high seas is a floating part of the territory of the State to which it belongs: *Ex parte Byers*, U. S. Dist. Ct. E. Dist. Mich., 32 Fed. R. 404, 410 (1887). But when a merchant vessel of one country enters the ports of another, for the purposes of trade, it subjects itself to the law of the place to which it goes, and the Courts of that country can punish crimes committed on such foreign ships: *Wildenhus' Case*, 120 U. S. 1 (1886).

The law as to crimes committed on the Great Lakes has not been in all respects satisfactory. Under the power "to regulate commerce with foreign nations and among the several States," the Congress has undoubted authority to protect the lives and property of persons navigating those waters, but the failure to exercise the power has led to a denial of justice in important cases. This subject was recently before the District Court of the United States for the Eastern District of Michigan, in the case of *Ex parte Byers, supra*. In that case Mr. Justice BROWN was of the opinion that the State Courts had at that time exclusive jurisdiction of crimes committed on the lakes, and their connecting waters, upon the American side of the boundary line, Congress not having enacted any law as to offences committed in such waters. And he was also of the opinion, that the Federal Courts had no jurisdiction over a crime committed upon the Canadian side of such waters, holding that the Great Lakes and their connecting waters were not included within the words used in the Revised Statutes of the United States, conferring jurisdiction on the Federal Courts, that is, the words "high seas, or river, haven,

creek, basin, or bay, within the admiralty jurisdiction of the United States." He said: "That the lakes are not 'high seas' is too clear for argument. These words have been employed from time immemorial to designate the ocean below low water-mark, and have rarely, if ever, been applied to interior or land-locked waters of any description. * * * Now, it seems incredible, that, if Congress had designed to extend the Act of 1790 to the Great Lakes, a series of waters entirely separate, distinct and distant from the high seas and their connection, it should not at least have inserted the word 'lakes,' or have used the still more explicit language to designate those interior waters. The words 'haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State,' following the words 'high seas,' seem to me clearly to be such as are connected immediately with the high seas, and to be much the same as the words 'arm of the sea,' in the same section. While the word 'river' may be properly used to designate the straits which connect Lake Huron and Lake Erie, it would be little short of absurd to impute to Congress the intent to give criminal jurisdiction to those rivers, and not to the lakes from and into which they flow." The Court therefore reluctantly ordered the discharge of the prisoner, who had committed a crime on the Canadian side of the straits connecting the waters of Lake Erie and Lake Huron.

It is provided in section 3 of Article IV. of the Constitution of the United States, that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Under this provision Congress has unquestionably full power to govern the Territories, and it may enact such laws, and establish such criminal and civil codes for the protection of life and property within the Territories, as in its wisdom shall seem desirable. But when Congress admits a Territory to Statehood, the Federal government loses this power of legislation, and its right of jurisdiction over criminal offences becomes transferred to the State itself. This admission of the State does not divest the United States of its title to any of the public lands situated within

the State limits, but its jurisdiction over those lands is as completely gone as it is over the lands owned by private persons situated within the same State limits. Thus in *United States v. Stahl*, 1 Woolworth, C. C. 192 (1868), a crime had been committed on land within the boundaries of the State of Kansas, the fee of the land having been in the government of the United States prior to the organization of Kansas into a Territory, and it had ever since so continued. Mr. Justice MILLER held that the Federal Courts had no jurisdiction over the offence; that in admitting Kansas into the Union, the government of the United States became divested, not of its title to the soil in question, but of its jurisdiction over the same.

Of course, the same principle must be applied in the case of crimes committed on land to which the United States becomes entitled after the admission of the State. The jurisdiction of the State having once attached to the soil in question, cannot be taken away from it by the mere subsequent purchase of the land by the United States: *United States v. Penn*, 4 Hughes, 491 (1880); where it was held that the Federal Courts were without jurisdiction of offences committed in the National Cemetery, on the heights of the Potomac, opposite Washington.

The Constitution, however, provides that Congress shall exercise exclusive legislation "over all places *purchased by the consent of the Legislature of the State*, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Under this provision the State Courts are deprived of jurisdiction over offences committed in the places above enumerated, the jurisdiction being dependent on the laws of the United States, and not at all on those of the State. The question was raised in 1884 in the Supreme Court of Maine, in *State v. Kelly*, 76 Me. 331. A mortal blow or wound had been inflicted within a fort belonging to the United States, within the boundaries of Maine. The injured person died outside the fort, but within the State of Maine, and the person who inflicted the wound was indicted in the State Courts. The Court held that the crime was committed when the blow was struck, and not when the

person died, and that therefore the Courts of the United States had jurisdiction over the offence, and that their jurisdiction was exclusive of that of the State. And it was further held that a State statute, declaring that the Courts of a county in which a person should die of a mortal wound elsewhere received, should have jurisdiction of the offence, was wholly inapplicable to the case of one whose mortal wound was received within a fort of the United States. And see *Commonwealth v. Clary*, 8 Mass. 72 (1811).

However, the mere fact that a place is owned and occupied by the United States as a fort, arsenal, magazine, etc., does not necessarily give to the United States jurisdiction over offences therein committed. Where a place occupied by the United States for military, or other constitutional purposes, is located within a State, but has not been reserved by the United States in the organic Act, or in the Act admitting the territory into the Union, and where there has been no cession of such place by the State to the United States, the State Courts, and not the Federal Courts, have jurisdiction over crimes committed therein. And this is so though the place may have been constantly occupied and used by the United States, whether under purchase or without purchase. The question was presented to the Supreme Court of New York in 1819 in *People v. Godfrey*, 17 Johnson, 225. The defendant had been convicted of murder, committed within the walls of Fort Niagara. The prisoner and the deceased were fellow soldiers in the army of the United States, and the deceased, for some military offence, was under the custody of the accused in the "black hole," when the latter stabbed him with a bayonet, causing his death. The prisoner was placed on trial in the State Court, and claimed that the Federal Courts alone had jurisdiction over his offence, as having been committed within a fort of the United States. It appeared that Fort Niagara was captured from the French in 1759, and passed, by virtue of the treaty of peace of 1763, to the Crown of Great Britain, and that it continued to be held by that power, as a fortress, until it was surrendered under the treaty of 1794, since which time it had been possessed and garrisoned by the United States. It was within the acknow-

ledged limits of the State of New York, and had never been formerly ceded by the State to the United States. The Supreme Court of the State of New York decided, Chief Justice SPENCER writing the opinion, that the State Courts had jurisdiction of the offence. They held that it was beyond all doubt that the United States acquired no territorial rights to any portion of the State of New York, in virtue of the treaties of 1783 and 1794, and that, when Great Britain, in accordance with these treaties, withdrew its garrisons from any place, it was for the benefit of the several States within whose limits the garrisons were. And they further held, that the occupation of the fort by the troops of the United States, since its evacuation by the British, could not be considered as evidence of a right in the general government to the post itself, nor as an act hostile to the rights of the State of New York. A somewhat similar question came before the Supreme Court of Kansas, in respect to a crime committed on the military reservation at Fort Leavenworth. That reservation had been acquired by the United States as a part of the Territory of Louisiana, and had been used for military purposes. But in the organic Act, and in the Act admitting the Territory as a State, there had been no reservation of jurisdiction over the soil in question. And there never had been any cession of the property by the State to the United States. It was accordingly held in *Clay v. State*, 4 Kansas, 49 (1866), that the State Courts had jurisdiction of the offence of larceny committed within Fort Leavenworth.

The question of jurisdiction over offences committed upon Indian Reservations has been before the Courts in a number of cases. The principle has been laid down that when a Territory is admitted as a State, without any reservation in the enabling or organic Act, the Federal Courts have no jurisdiction over offences committed within what are known as Indian Reservations. Thus in *United States v. Ward*, 1 Woolworth C. C. 17 (1863), a white man had been indicted for the murder of a white man committed on an Indian Reservation in Kansas, and it was held that the Federal Courts were without jurisdiction. And on a similar state of facts, the State Courts of Nebraska held that they had jurisdiction over an

offence committed by one white man on another, within an Indian Reservation in that State: *Marion v. State*, 16 Neb. 358 (1884); s. c. 20 Id. 233, 247 (1886). In the above cases, the crimes were committed by white men upon white men. There is, however, no question but that the State can punish its own citizens for crimes committed on such territory against the Indians. See *U. S. v. Cisna*, 1 McLean, 254, 263 (1835). Of course, if the United States, in the organic or enabling Act, admitting the State to the Union, reserved its jurisdiction over the Indian Reservations, within the outside boundaries of such State, the jurisdiction over offences committed in such places would, unquestionably, be in the United States Courts. See *United States v. Rogers*, 4 How. (U. S.) 567, 572 (1846). When, however, the State comes in without any such restrictions or reservations, it has been held to have the right to extend its criminal laws over Indians living on the Reservations: *State v. Foreman*, 8 Yerger (Tenn.), 256 (1835); *State v. Tassels*, Dudley (Ga.), 229 (1830); *State v. Ta-cha-na-tah*, 64 N. C. 614 (1870); *State v. Dextater*, 47 Wis. 278 (1879); *State v. McKenney*, 18 Nev. 182 (1883). In the case last above cited, it was decided that while the State had the right to extend its criminal laws over Indians living in tribal relations on Reservations, yet State laws do not apply to them unless they are so expressed. And it was held that the State Courts of Nevada had no jurisdiction over an offence committed by an Indian on an Indian, both of whom were members of an organized tribe, living on a Reservation, and having laws for the government of their internal affairs. But the Supreme Court of the United States has recently made a very important decision on the subject we are now considering. In *United States v. Kagama*, 118 U. S. 375 (1886), that Court decides, Mr. Justice MILLER writing the opinion, that Congress can constitutionally pass a law, making it a crime for one Indian to commit murder upon another Indian, upon an Indian Reservation, situated wholly within the limits of a State, and making the Indian so offending subject to be tried in the same Courts and in the same manner and subject to the same penalties as are all other persons committing the crime of murder "within the exclu-

sive jurisdiction of the United States." It had previously been held that Congress, in the exercise of its constitutional power to regulate intercourse with the Indian tribes, might define and punish crimes committed by white men upon the person or property of an Indian, and *vice versa*, within as well as without the limits of a State: *United States v. Martin*, 8 Sawyer, 473 (1883); *United States v. Bridleman*, 7 Id. 243 (1881). But the decision of the Supreme Court of the United States, above referred to, is placed on the broad ground that the Indians are the wards of the United States and that the government has the right to protect them.

We have hitherto considered crimes committed on Indian Reservations. But a word must be added as to crimes committed by Indians off their Reservations. It has been decided that United States Courts have no jurisdiction over Indians, living on Indian Reservations, who commit crimes on white men, while off their Reservations. The Courts of the State in which the crime is committed, have jurisdiction in such cases: *United States v. Yellow Sun*, 1 Dillon, 271 (1870). And to the same point, see *United States v. Sacoodacot*, 1 Abbott (U. S. C. C.) 377 (1870).

Each State possesses exclusive power to provide for the punishment of offences within its own limits, except in so far as its power may have been surrendered to the government of the United States by the Federal Constitution: *State v. Chapman*, 17 Ark. 561, 565 (1856). And within the State, crimes must be tried in the county in which the criminal act was committed: *State v. Wyckoff*, 31 N. J. L. 65, 68 (1864).

It is a very old rule of the common law that requires every offence tried in the common law Courts, to be inquired of in the county where the act took place. The peculiar character of the early jury affords an explanation and reason for the rule. Jurors were originally witnesses as well as triers, and were expected to act upon their own knowledge of the facts involved, and of the character of the witnesses on either side. But when they became simply triers of fact, the rule was already firmly established, and it was seen that there were marked and strong advantages in selecting the jurors from the county in which the crime had been committed. It would

be a great burden and injustice, if a man could be carried to a distant part of the State and compelled there to make his defence at a distance from the place in which the act complained of occurred. And so the old rule was retained, even after the original reason for its existence had ceased. The same principle is observed in the criminal jurisdiction of the Federal government. For the judicial purposes of that government, the States are not divided into counties, but are organized into districts. In some of the States there is but one judicial district, while in others there are two or more of them. And the sixth amendment to the Constitution of the United States declares that "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." The denial of the right to a trial by a jury of the vicinage is one of the causes which led to a separation from the mother country. The Declaration of Independence arraigns George III. : "For transporting us beyond seas, to be tried for pretended offences."

Personal presence at the place where the crime is perpetrated, or even within the State where the crime is committed, is not always indispensable to confer jurisdiction on the Courts of such place or State. For while the offender may not be corporally present, he may be there by the instrument or agent used to effect his purpose. If a person outside the State acts within the State through an innocent agent, he is amenable to the law of the State. Thus in *Barkhamsted v. Parsons*, 3 Conn. 1, 8 (1819), it is said: "The principle of common law, *qui facit per alium, facit per se*, is of universal application, both in criminal and civil cases, and he who does an act in this State by his agent, is considered as if he had done it in his own proper person." And so in *The People v. Adams*, 3 Denio, 190, 210 (1846), where it is said: "True, the defendant was not personally within this State, but he was here in purpose and design, and acted by his authorized agents. *Qui facit per alium, facit per se*. The agents employed were innocent, and he alone was guilty. An offence was thus committed, and there must have been a guilty offender, for it would be somewhat worse than absurd to hold

that any act could be a crime, if no one was criminal. Here the crime was perpetrated within this State, and over that our Courts have an undoubted jurisdiction. This necessarily gives to them jurisdiction over the criminal. *Crimen trahit personam.*"

When one is guilty only as an accessory before the fact, the rule has been that he can only be tried in the place where his guilty act of accessoryship took place. Thus, when several persons entered into a conspiracy in Ohio to burn a steamboat, and the boat was burned in Arkansas, the Supreme Court of the latter State held that one of the confederates, who had remained in Ohio and was simply an accessory before the fact, could not be tried in the Courts of Arkansas: *State v. Chapin*, 17 Ark. 561 (1856). And so when the accused made arrangements in New York with a confederate to go into New Jersey and steal certain property, which the latter did, the former remaining in New York, it was held that the former, being simply an accessory before the fact, could not be tried in the Courts of New Jersey: *State v. Wyckoff*, *supra*. And other cases there are to the same effect: *Johns v. State*, 19 Ind. 421 (1862); *State v. Moore*, 26 N. H. 448 (1853). This doctrine was repudiated by the Supreme Court of Connecticut, in *State v. Grady*, 34 Conn. 118 (1867). The defendants conspired, with certain accomplices, in the city of New York, to commit the crime of larceny in the State of Connecticut, and the larceny was accordingly committed. It was claimed as to certain of the defendants, that the Connecticut Court had no jurisdiction to try them, notwithstanding they had assisted in the initiation of the plot in New York, inasmuch as they did not come into the State and assist personally in the commission of the crime. But it was held that the Court might punish their offence, having obtained jurisdiction of their person. As the question is quite important, it may be well to notice the grounds upon which the conclusion was based. The Court say: "The general proposition that no man is to suffer criminally for what he *does* out of the territorial limits of the country, if applied to a case where the act is completed out of the country, is correct; but it is the highest injustice that a man should be protected in

doing a criminal act here, because he is personally out of the State. His *act* is here, although he is not. * * * The reason given for the distinction is, that, if the offence is a felony, he sustains the relation to it, if performed by a guilty agent who can be punished, of an accessory, and not of a principal, and that, as technically an accessory, he must be pursued in the locality where he committed the enticement. The doctrine has never been recognized in this State, is inconsistent with our system of criminal law, and does not commend itself to our judgment. In the first place, it has not been recognized here. There has been no case in our Courts where the prisoner has been indicted and acquitted, because, although a party to the offence, he was not in the State at the time it was committed. * * * In the second place, the doctrine is inconsistent with our system of criminal law. By express statutory provision we have done away with the distinction between principal and accessory in felony: and every person who aids and assists in the commission of a crime, or the protection of a criminal, is made a principal, and punishable and indictable as such. * * * And in the third place, the doctrine, as applicable to this country, is vicious, and should be repudiated. It originated, as Mr. Bishop tells us, in the blunder of some judge. * * * The blunder was corrected by the statute of Edward VI., Chap. 24, §4, which provided that such accessory might also be indicted in the county where the offence was committed. It would seem that a rule thus originating in a blunder, and applicable only in respect to counties in the State where the offence is committed, and corrected by express statute, and favoring the commission of crime, ought not to be adopted and applied to States situated as these are, tied together by a ligament giving to the citizens of each, citizenship in all." And see *State v. Ayers*, 8 Baxter (Tenn.) 96 (1874).

It is not within our purpose to discuss the question of who is an accessory before the fact, and who is not. But we cannot forbear in this connection calling attention to the interesting case of *State v. Hamilton*, 13 Nev. 386 (1878). Certain persons had conspired to rob a stage on its way from Eureka in Eureka County, to a place in Nye County in the

same State of Nevada. One of the confederates was to remain at Eureka and make a signal to his confederates in Nye County, some forty miles distant, when the stage left Eureka, the signal being given by building a fire on the top of a mountain. And the question was whether this confederate, whose act was performed in Eureka County, he having built the fire as agreed, could be held in Nye County for an attempt to rob there, he not having been present in the latter county when his confederates attacked the stage. And it was decided that he might be tried in Nye County, not as an accessory before the fact, but as a principal, the law being that when several persons confederate together for the purpose of committing a crime, which is to be accomplished in pursuance of a common plan, all who do any act which contributes to the accomplishment of their design, are principals, whether actually present or not.

According to the common law, the crime of bigamy occurs and is complete at the time and place when the second marriage is accomplished. The offence consists in going through the ceremony of marriage. That single fact constitutes the crime, and not the subsequent cohabitation: *Gise v. Commonwealth*, 81 Pa. 428 (1876). The result is that an indictment for bigamy must be found in the county and State in which the bigamous marriage was entered into. Thus in *Walls v. The State*, 32 Ark. 565 (1877), the second marriage was contracted in the county of Woodruff, Arkansas, and the indictment for bigamy was found in Jackson County in the same State. This indictment was based on a statute which allowed the person to be tried for bigamy in any county where he was apprehended, and this law was held unconstitutional. The Court ruled that an indictment for bigamy could only be found in the county where the bigamous marriage was celebrated.

In cases of homicide, where the blow was struck in one county and death resulted therefrom in a different county, there seems in early times to have been some doubt as to the proper place of trial. East declares that the common opinion was that the criminal might be indicted where the stroke was given, no matter where the death took place: 1 East P.

C. 361. But, whatever of doubt may have existed, it is now very well settled by the weight of authority that the crime of murder is committed when the blow is struck, irrespective of the place where the death occurs: *State v. Gessert*, 21 Minn. 369 (1865); *Commonwealth v. Parker*, 2 Pick. (Mass.) 550 (1824); *State v. Bowen*, 16 Kans. 475, 479 (1876); *Riley v. State*, 9 Humph. (Tenn.) 646 (1849); *United States v. Guiteau*, 1 Mackey, D. C. 498; *Green v. State*, 66 Ala. 40 (1880). And see *State v. McCoy*, 8 Rob. R. (La.) 545 (1844); *State v. Foster*, 7 La. Ann. 255 (1852). In the first of the cases cited, the blow was inflicted in Minnesota and death took place in Wisconsin. The Minnesota Court held that it had jurisdiction over the offence; that the death in Wisconsin was not the act of the accused committed in Wisconsin, but the consequence of his act committed in Minnesota, against the peace and dignity of the latter State.

In *United States v. Davis*, 2 Sumner (U. S. C. C.) 482, an American sailor in an American ship in one of the Society Islands harbors fired a shot, which killed a man in a foreign ship. The Court, Mr. Justice STORX, held that the murder was committed when the blow was struck, and as the deceased was struck while on a foreign ship, our Courts had no jurisdiction over the offence.

So, when a person standing on one side of a boundary line fires across the same and kills a man standing in another State, the murder is committed in the latter State, when the shot takes effect: *State v. Chapin*, 17 Ark. 561, 565 (1856); *State v. Wyckoff*, *supra*; *State v. Carter*, 27 N. J. L. 499 (1859).

Some of the States have enacted that, if a mortal wound is inflicted outside the State and death ensues therefrom within the State, the offence may be prosecuted and punished in the county within the State, wherein such death may take place. The constitutionality of a statute of this kind was called in question in *Tyler v. People*, 8 Mich. 321 (1860), and it was said to be "clearly within the scope of the legislative power." But the opinion does not discuss the matter at any length, although the subject is extensively considered in a dissenting opinion of one of the justices, who found himself unable to

acquiesce in the conclusion reached by the Court. The same question was afterwards presented to the Supreme Court of Massachusetts in *Commonwealth v. Macloon*, 101 Mass. 1 (1869). The matter was carefully considered and a like conclusion was reached, the constitutionality of the Act being upheld. The contrary doctrine was asserted in New Jersey in *The State v. Carter*, 3 Dutcher, 499 (1859). But see *Hunter v. The State*, 40 N. J. L. 495 (1878), and *Queen v. Lewis*, 7 Cox C. C. 277 (1857).

Many of the States have provided by statute, that, when the commission of an offence is commenced within the State, but is consummated without its boundaries, the offender is liable to punishment within the State, and that the county in which the offence is commenced, shall have jurisdiction thereof. The validity of such a statute was called in question in *Green v. State*, 66 Ala. 40 (1880), on the ground that its enactment was beyond the scope of legitimate legislative power, as the penal laws of a State could not operate beyond its own territorial domain. The objection was held untenable and the statute sustained. In that case, a mortal wound was inflicted in Alabama and death occurred in Georgia, and it was held that the offender might, under this statute, be properly convicted of murder in Alabama, irrespective of the common law rule that murder is committed when the blow is struck, irrespective of the place of death.

In the law of larceny, the principle is well established that, if one steals goods in one county and carries them into a second county in the same State, he may be indicted for the theft in either county: *State v. Douglas*, 17 Me. 193 (1840); *Commonwealth v. Cullins*, 1 Mass. 116 (1804); *Commonwealth v. Dewitt*, 10 Id. 154 (1813); *State v. Somerville*, 21 Me. 14, 19 (1842); *Myers v. The People*, 26 Ill. 173, 177 (1861); *State v. Margerum*, 9 Baxter (Tenn.), 362 (1878); *The People v. Burke*, 11 Wend. (N. Y.) 129, 130 (1834).

But this is no contradiction of the principle that a crime is to be punished in the county where it was committed. The indictment in the second county is for the larceny committed in that county, and not for that which was committed in the first county. The legal possession of goods stolen continues

in the owner, and every moment's continuance of the trespass is said to amount in legal contemplation to a new caption and asportation. Hence the *venue* may be laid in any county in the State into which the thief conveys them, as the offence of taking and converting is there in itself complete. Some of the earlier American decisions decline to apply this principle when goods have been stolen in one State and carried by the thief into another State. They have held that under such circumstances the thief could not be indicted for larceny in the latter State: *Simpson v. The State*, 4 Humph. (Tenn.), 456 (1844); *People v. Gardner*, 2 Johnson (N. Y.) 477 (1807); *Simmons v. Commonwealth*, 5 Binney (Pa.), 618 (1813); *State v. Brown*, 1 Haywood (N. C.), 100. The first of these cases was afterwards, in 1834, disapproved by Mr. Chief-Justice SAVAGE in *People v. Burke*, 11 Wend. (N. Y.) 129. And later cases hold that the thief may be convicted of the larceny in any State into which he takes the goods: *Hamilton v. State*, 11 Ohio, 435 (1842); *State v. Bennett*, 14 Iowa, 482 (1863); *State v. Johnson*, 2 Oregon, 115 (1864); *Watson v. State*, 36 Miss. 593 (1859); *State v. Ellis*, 3 Conn. 187 (1819); *Terrill v. Commonwealth*, 1 Duval, 156 (1864); *State v. Underwood*, 49 Me. 181 (1858); *Commonwealth v. Andrews*, 2 Mass. 14, 24 (1806); *Commonwealth v. Holder*, 9 Gray (Mass.), 7 (1857); *Commonwealth v. White*, 123 Mass. 433 (1877); *Worthington v. State*, 58 Md. 403 (1882); *Commonwealth v. Cullins*, 1 Mass. 186 (1804); *State v. Hill*, 19 S. C. 435 (1883).

It has been argued that the rule which is applied, as between counties of the same State, as well as between the commonwealths in the American Union, ought not to be applied where the goods have been stolen in some foreign country and brought into one of our States. In *Commonwealth v. Uprichard*, 3 Gray (Mass.), 434 (1855), such a distinction was recognized, and it was decided that an indictment could not be sustained for a larceny in Massachusetts of goods stolen in the Province of Nova Scotia and brought from there by the thief to Boston. This distinction was held not to exist in *The State v. Bartlett*, 11 Vermont, 650, 653 (1839), and it was decided that when oxen were stolen in Canada, and by the thief brought into Vermont, he could be indicted

and convicted in the latter State. And the Massachusetts ruling was repudiated in *State v. Underwood*, 49 Me. 181 (1858), where a verdict was sustained for larceny against one who stole the goods in the Province of New Brunswick and carried them into the State of Maine.

In some States statutes have been passed governing the matter above discussed, and in some cases the Courts have been required to pass on the constitutionality of their provisions. Such a question was presented in *The People v. Williams*, 24 Mich. 157 (1871). The statute provided as follows: "Every person who shall feloniously steal the property of another, in any other State or country, and shall bring the same into this State, may be convicted and punished in the same manner as if such larceny had been committed in this State," etc. The goods in question had been stolen in Louisiana and brought into Michigan. Mr. Justice COOLEY, in writing the opinion sustaining the statute, said: "Now, it may be true that this wrong would not have been an offence within this State at the common law; but that does not prevent its being made so by statute." The same Court in *Morrissey v. The People*, 11 Mich. 327 (1863), were equally divided in opinion as to whether the Legislature could constitutionally provide for the punishment in Michigan of persons who committed larceny in a *foreign* country and carried the stolen property into Michigan. The goods in that case had been stolen in Canada. The question involved in *Morrissey v. The People* was not discussed in the case of *The People v. Williams*, as the goods in the latter case were stolen in a sister State. But the constitutionality of a similar statute was sustained in New York, where money was stolen in Canada and brought by the thief into New York: *The People v. Burke, supra*.

In *State v. Johnson*, 38 Ark. 568 (1882), a statute declaring that a person who committed larceny in one county and then brought the stolen goods into another county, might be indicted in the latter county, was held not abrogated by a subsequent constitutional provision securing to the accused, in all criminal prosecutions, "the right to a speedy and public trial, by an impartial jury of the county in which the crime

shall have been committed." It was held that the crime was in fact committed in the second county as well as in the first county, as every moment's continuance of the trespass and felony amounted to a new caption and asportation.

It has been provided by statute in some of the States, that a person committing a burglary and larceny in one county, and carrying the stolen property into another county, may be indicted, tried, and convicted for the burglary in the latter county, as if the crime had been there committed. It is well known that at common law such a person could not have been convicted of burglary in the latter county, but only of the larceny, inasmuch as the breaking and entering essential to the crime of burglary occurred in the former county.

And the question has been raised under these statutes whether the Legislature has the power to take away the local character of the offence of burglary. Such a question was raised in *Mack v. The People*, 82 N. Y. 235 (1880). It was argued that the Bill of Rights secured the individual against a trial "unless on presentment or indictment of a grand jury," and that this meant a grand jury of the same county wherein the offence was committed. The Court of Appeals, in overruling the point, said: "Doubtless, at common law, the grand jurors were sworn *ad inquirendum pro corpore comitatus*, and could not regularly inquire of a fact done out of that county, for which they were sworn. * * * But by Act of Parliament they might be specially enabled so to do. * * * By all rules of interpretation, then, we are to read the language of the Bill of Rights in the light of the law as it was when the Bill of Rights was adopted. Then, though as a rule indictments could be preferred and tried only in the county where the offence was committed, there were exceptions to that rule of instances in which the Legislature had directed otherwise, and the Bill of Rights must be taken to have recognized that legislative power, and not to have intended the abrogation of it, as there is no indication in the language of a purpose so to do. It must be taken to have meant an accusation preferred by a grand jury, as authorized by law, present and future, common law or statutory."

Under such a statute as that above referred to, it is neces-

sary to allege in the indictment the facts which bring the case within the statute. If the burglary was committed in the county of A., and the goods carried into the county of B., an indictment found in the county of B., alleging simply that the burglary was committed in the county of A., would be bad, and, if it alleged that it was committed in the county of B., the evidence would show a variance. It would be necessary to allege that the burglary was committed in the county of A., and that the goods were brought by the offender into the county of B.: *Haskins v. The People*, 16 N. Y. 344 (1857).

In the law of libel, the rule is that, if a libel is published in a newspaper printed in one State and circulated in another, an indictment in the latter State will be sustained: *Commonwealth v. Blanding*, 3 Pick. (Mass.) 304 (1825). And it was held in *King v. Burdett*, 4 B. & Ald. 95 (1820), that a delivery at a post-office in the county of L. of a sealed letter, inclosing a libel, was a publication of the libel in L., and that where one wrote and published a libel in L., with the intent to publish, and afterwards published it in the county of M., the writer could be indicted in either county. And see the case of *The Seven Bishops*, 12 State Trials, 331 (1688).

In the law relating to the obtaining of goods by false pretences, the better opinion is that the offence is committed when the goods are obtained, no matter when the false representations may have been made. The making of false representations does not amount to a crime; the crime consists in obtaining the goods, the false pretences simply being a means employed to bring about that end. Hence, if the false pretences are made in one county and the goods obtained in a different county, the indictment should be in the latter county: *State v. House*, 55 Iowa, 472 (1881); *State v. Dennis*, 80 Mo. 589 (1883); *People v. Sully*, 5 Parker C. R. (N. Y.) 142 (1860); *People v. Rathbun*, 21 Wend. (N. Y.) 509, 538 (1839). And so is it, when the representations are made in one State and the goods obtained in another: *State v. Saeffer*, 89 Mo. 271 (1886); *Stewart v. Jessup*, 51 Ind. 413 (1875); *Commonwealth v. Van Tuyl*, 1 Met. (Ky.) 1 (1858).

In *Rex v. Lara*, 6 Term R. 565 (1796), it was announced that, if a man draws a check upon a bank with which he has no

money, and hands it as a good check to another party, it is a false pretence as regards that party, but not as regards the banker. It follows, therefore, that, if A., in Michigan draws a check on a bank in Pennsylvania in which he has no funds, and obtains the money on that check from a bank in Michigan, which thereafter receives the money on it from the Pennsylvania bank, the crime of obtaining money under false pretences has been committed in Michigan, and must be punished there, and not in Pennsylvania. Such a question came up *In re Carr*, 28 Kans. 1 (1882), and the above principle was applied. The same case also shows that, if A. in Michigan should draw a forged check on a bank in Pennsylvania, and the Michigan bank should pay it, and then send it on to Pennsylvania for collection, the forger would be amenable to the law of the former, and not to that of the latter State. But the case of *The People v. Adams*, 3 Denio (N. Y.), 190 (1846), shows that, if the Michigan bank, instead of paying the check, had taken it for collection as the agent of the forger, and as such actually received the money for the forger from the Pennsylvania bank, the forger would have been liable to indictment in the latter State for obtaining the money under false pretences. Where money or goods are sent by the owner by mail to one who has obtained the same by false representations, the offender should be indicted at the place where the money was mailed, as it is there that the owner of the property parts with his control over it: *Commonwealth v. Wood*, 142 Mass. 459, 462 (1886).

When a forged instrument is sent by mail from one county to an individual in another county, the crime of uttering and publishing it is not consummated until the paper is received by the person to whom it was sent. The proper place of trial, therefore, is in the county where the instrument is received, and not in the one in which it was mailed. *The People v. Rathbun*, *supra*, is an important case sustaining the above principle, the matter having been exhaustively considered by Mr. Justice COWEN. The accused had mailed in New York City a forged instrument to a party in Genesee County, in the same State, and it was held that the proper place of trial was in the county of Genesee, for the crime of uttering

and publishing the paper in question. And the same principle is applied when the instrument is mailed in one State to a person in another State. Such was the case in *Lindsay v. The State*, 38 Ohio St. 507 (1882). A forged deed was mailed in Missouri to a person in Ohio, where the land described in the deed was situated. It was held that the crime of uttering and publishing the forged paper was consummated in Ohio, where the paper was received, and not in Missouri, where it was mailed.

An Iowa statute on the subject of abortion provided as follows: "That any person who shall wilfully administer to any pregnant woman any medicine, drug, substance, or thing whatsoever, or shall use or employ any instrument or other means whatever, with the intent thereby to procure the miscarriage of any such woman, unless the same shall be necessary to preserve the life of such woman, shall, upon conviction thereof, be punished," etc. It was held, under this statute, that the offence was complete when the medicine was administered, and that the jurisdiction over the offence was with the county wherein the medicine intended to produce the miscarriage was administered, and not with the county where the miscarriage took place: *The State v. Hollenbeck*, 36 Iowa, 112 (1872). In *Robbins v. State*, 8 Ohio St. 131, 164 (1857), it was held that the overt act of administering poison consisted not merely in prescribing or furnishing the poison, but also in directing and causing it to be taken; so that if the poison was prescribed and furnished in one county to a person who carried it into another county, and then, under the directions given, took it and became poisoned and died of the poison, the administering was consummated and the crime committed in the county where the person was poisoned.

HENRY WADE ROGERS.

Ann Arbor, Mich.