

paper in evidence, in its body, and general form and style, is made after the similitude of a United States bond.

The case of *People v. Ah Sam*, 41 Cal. 645, was referred to on the argument, but it is inapplicable to the case at bar. In that case the defendant was indicted for having in his possession blank and unfinished bank bills, in the form and similitude of a bill for the payment of money, with intent to fill up and complete the same; and the statute under which the indictment was found declared it to be an offense to have in possession blanks having the form or similitude of bills for the payment of money, etc.

On the whole, my opinion is that the conviction of the defendants cannot be sustained. They undoubtedly attempted to commit a gross fraud; but the statutory offense of which this court has jurisdiction, is not established. The difficulty in the way of maintaining a conviction is attributable to a defect in the statute, and that defect congress alone can remedy. Motion for new trial granted.

UNITED STATES *v.* SNYDER and another.

(Circuit Court, D. Minnesota. February, 1882.)

1. CRIMINAL LAW—FRAUDULENT RETURNS OF POSTMASTER.

Any postmaster who shall make a false return to the auditor for the purpose of fraudulently increasing his compensation shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished under the provisions of chapter 259, vol. 20, St. at Large, (2 Supp. Rev. St. 358.)

2. SAME—AIDERS AND ABETTORS—AS PRINCIPALS.

The statute above cited is not limited in its operation to the conviction and punishment of the postmaster guilty of the offense alone, but may be extended to all persons aiding, abetting, and assisting in the commission of the crime, who are alike guilty of a misdemeanor under the statute, and may be indicted and convicted thereunder as principals.

3. SAME—PUNISHMENT OF AIDERS AND PROCURERS.

All aiders, procurers, or abettors in statutory offenses are punishable as principals, under the statute, although not expressly referred to in the statute, and that a defendant, though incompetent to commit the offense, as principal, by reason of not being of the particular age, particular sex, condition, or class, may nevertheless be punished as procurer or abettor.

4. INTENT OR MOTIVE—EVIDENCE OF OTHER SIMILAR ACTS.

Where the question is one of a fraudulent intent, it is allowable, as well in criminal as in civil cases, "to introduce evidence of other acts and doings of the party of a kindred character, in order to illustrate or establish the intent or motive in the particular act directly in judgment."

5. SAME—TRANSCRIPT OF AUDITOR OF DEPARTMENT.

It was *held* proper to admit in evidence the transcript of the report described in the indictment, duly certified by one of the auditors of the treasury for the post-office department.

6. EXCEPTION—ERROR.

Exception having been taken, on previous trial of this case, to the statement by the district attorney, in his argument before the jury, to the effect that the failure of the defendant to testify in his own behalf should raise presumption against him, *held*, that it appearing on the records of such previous trial that the judge in his charge had corrected the remark, and stated to the jury that such language by the district attorney was wrong, cured whatever error there was in such statement.

The defendants are indicted under chapter 259, vol. 20, St. at Large, (Supp. to Rev. St. vol. 1, p. 358,) which provides that "any postmaster who shall make a false return to the auditor for the purpose of fraudulently increasing his compensation under the provision of this or any other act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than fifty nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or punishment by both such fine and imprisonment, in the discretion of the court." The defendant Snyder was postmaster at Germania, Minnesota. The defendants are jointly charged in the indictment with having willfully, etc., made a false return to the auditor of the treasury of the United States for the post-office department, for the purpose of fraudulently increasing the compensation of the said Mait. Snyder, as such postmaster, under the provisions of an act of congress mentioned in the indictment. There was a trial in the district court, which resulted in a verdict of guilty against Bertram, who moved for a new trial, and in arrest of judgment, upon grounds which are stated in the opinion. The case having been certified into this court by the district judge, has been here argued.

C. A. Congdon, Asst. U. S. Atty., for the Government.

O'Brien & Wilson, for defendant.

McCrary, C. J. 1. The first and most important question presented by this record is whether defendant, Bertram, not being a postmaster, can be indicted and punished under the above-mentioned act of congress. That act, by its terms, applies only to postmasters, and the question is whether any other person can be found guilty of a misdemeanor under it. The record in this case shows that the defendant Bertram was guilty of aiding, abetting, and assisting Snyder in the commission of the crime. He in fact prepared with his own hand the false reports, and, knowing them to be false,

advised and induced Snyder to sign them. Upon careful consideration, we have reached the conclusion that this was an offense against the statute, notwithstanding the fact that only postmasters are named therein. The offense is a statutory misdemeanor; and it is well settled that all who aid, abet, procure, or advise the commission of a misdemeanor are guilty as principals. 1 Russ. Crimes, (9th Ed.) 60, note 1. And this is the rule whether the misdemeanor is created by statute or by the common law. *U. S. v. Mills*, 7 Pet. 138.

When congress creates a statutory misdemeanor we must assume that it is done with the above well-settled rules of law in view, and if so, with the intent that aiders and abettors, as well as the actual doers of the crime, may be punished under it. The rule that all procurers and abettors of statutory offenses are punishable under the statutes, although not expressly referred to in the statute, is supported by authority. *Bish. St. Crimes*, 36; *Com. v. Garnet*, 1 Allyn. 7; *U. S. v. Harbison*, 1 Int. Rev. Rec. 118; *U. S. v. Bayer*, 4 Dill. 407.

Although the defendant, Bertram, not being postmaster was incapable of being the principal actor in the commission of the crime, he may nevertheless be held to be an aider, procurer, and abettor, and therefore, in law, a principal. It has been adjudged repeatedly that the fact that a defendant was incompetent to commit the offense as principal by reason of not being of a particular age, sex, condition, or class, he may, nevertheless, be punished as procurer or abettor. *State v. Sprague*, 4 R. I. 257; *Boggus v. State*, 34 Ga. 275; *Rex v. Potts*, Russ. & R. Cr. Cas. 352; *Bish. Crim. Law*, 627-629; *U. S. v. Bayer*, *supra*. This doctrine is also supported by reason, for if it were not sound there could be no punishment of the crime of procuring a postmaster to defraud the United States by making false returns, even although the procurer might share in the proceeds of the fraud, and be actuated by the worst of motives.

2. The offense charged was the making of false returns for the quarter ending December 31, 1880. The prosecutor was allowed, against the objection of defendant, to introduce in evidence, not only the false returns for that quarter, but other similar returns for other periods before and after the time covered by the indictment, all being in the handwriting of the defendant, Bertram. There was no error in this ruling. Where the question is one of fraudulent intent, it is allowable, as well in criminal as in civil cases, "to introduce evidence of other acts and doings of the party of a kindred character, in order

to illustrate or establish his intent or motive in the particular act directly in judgment." *Wood v. U. S.* 16 Pet. 342.

3. It is insisted that defendant has been unlawfully convicted upon the uncorroborated testimony of an accomplice. It is true that the principal witness against defendant, Bertram, was his co-defendant and accomplice, Snyder, but it is not true that Snyder's testimony is uncorroborated. It is strongly supported by the testimony of Harris and Scanlon, who testify to facts tending to prove that the reports in question must have been false; by the letters from Bertram to Snyder, which are in evidence, and which show pretty clearly a knowledge of the crime and a desire to suppress the truth; and by the fact that the reports were all in Bertram's handwriting.

4. Exception is taken to the remarks of the district attorney, in his argument before the jury, to the effect that the failure of Bertram to testify in his own behalf should raise a presumption against him. This was improper, and if the court had failed to correct it on trial it might have been error. But the record shows that the court at once instructed the jury, and repeated it in the final charge, that such language by the district attorney was wrong, and that no presumption should be taken against the defendant because he did not testify in his own behalf. This cured whatever error there was in the remarks of the district attorney. If this were not so, it would be within the power of counsel, by such remarks, to invalidate the proceedings in any criminal case. *Ruloff v. People*, 45 N. Y. 213.

5. The transcript of the quarterly report described in the indictment, duly certified by the sixth auditor of the treasury for the post-office department, was properly admitted in evidence. *Rev. St.* § 889.

The motion in arrest of judgment must be overruled.

NELSON, D. J., concurs.

HAFF v. MINNEAPOLIS & ST. L. RY. Co. and others.

(Circuit Court, D. Minnesota. December Term, 1882.)

1. NEGLIGENCE—PERSONAL INJURIES—PROXIMATE CAUSE—DAMAGES.

To obtain a verdict for damages by reason of alleged negligence, it must be proven that the negligence of the defendant was the proximate cause of the injury.

2. SAME—RAILROAD COMPANY—DUTY UNDER LEASE.

A railroad company, having by lease the right to use the depot grounds and tracks of another company, owes the same duty to passengers of that company lawfully on the ground as it does to its own.

3. SAME—DUE DILIGENCE.

The question, what constitutes "due diligence?" in an action to recover damages caused by negligence, is one for the jury, and the *burden of proof* in such case is with the plaintiff to show the negligence.

4. SAME—CONTRIBUTORY NEGLIGENCE—CHOICE BETWEEN HAZARDS.

Where one, in the face of great danger, and obliged to choose between two hazards, makes such choice as a person of ordinary prudence and care placed in the same situation might make, and is thereby injured, the fact that if he had chosen the other hazard he would have escaped injury will not relieve the one by reason of whose negligence he was put in jeopardy.

At Law.

A suit is brought against both defendants, seeking to hold them liable for a personal injury sustained by their negligence. The Minneapolis & St. Louis Railway Company owned the depot grounds and track where the injury occurred, and had by lease permitted the Burlington, Cedar Rapids & Northern Railway Company to use them in common. The injury is alleged in the pleading to have been the result of the carelessness of the Burlington, Cedar Rapids & Northern Company while running its engine over the main track used by both companies. It is claimed both companies are liable. Additional facts appear in the charge of the court.

Lovely & Morgan, for plaintiff.

J. D. Springer, for defendants.

NELSON, D. J., (*charging jury*.) The issue in this case has been simplified so that it will not be necessary for me to detain you long. I will suggest (as I stated when the testimony was closed) that there is no cause of action against the Minneapolis & St. Louis Company, and your verdict must be in favor of that defendant. That leaves the action to proceed against the Burlington, Cedar Rapids & Northern Company.

This suit is brought by the plaintiff, a citizen of Michigan, to recover damages for a personal injury resulting from the negligence, as