

Without entering, at any considerable length, into the presentation of our reasons for this conclusion, we state to you here the leading considerations which have led us to it.

And, first and most important of all, it is essential to observe, in construing these sections of the Revised Statutes, a fundamental rule for construing such penal statutes, which is of universal application to all such penal legislation.

Chief-Justice Marshal, in the case of *United States v. Wiltberger*, 5 Wheaton, 95, states the rule we allude to, in these words:

"The rule that penal laws are to be construed strictly, is, perhaps, not less old than that construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of *punishment* is vested in the *legislative*, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment.

"It is said, that notwithstanding this rule, the intention of the law-maker must govern in the construction of penal, as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed *strictly*, they are not to be construed so strictly as to defeat the obvious intention of the legislature."

Chief-Justice Taney, in the case of *United States v. Morris*, 14 Peters, 475, states the same rule thus:

"In expounding a penal statute the court certainly will not extend it beyond the *plain meaning* of its words; for it has been long and well settled that such statutes must be construed strictly."

The case of *United States v. Clayton*, 2 Dillon, 217-25-26, was a case wherein the defendant, then governor of Arkansas, was indicted under section 22 of the act of Congress of the 31st of May 1870, 16 Stats., 145, being