

kind giving information, directly or indirectly, where or how, or of whom, or by what means, any of the hereinbefore mentioned matters, articles or things may be obtained or made, &c., shall be guilty of a misdemeanor," &c. The question submitted to the court was whether the indictment could be sustained, and it has answered it in the negative. The judges, however, did not decide that decoy letters cannot be used to detect persons engaged, or suspected to be engaged, in violating criminal laws; on the contrary, it recognized the doctrine that such letters may be so used. But it quashed the indictment on the ground that the letter written by Whittier did not give the prohibited information, and hence was not within the statute. The point is a very narrow one, for evidently, if the letter of inquiry had been a genuine one, the reply, stating how the article could be procured, would have brought the case within the statute. Decoy letters are, in truth, not to be commended, nor to be lightly resorted to; but if their use is ever justifiable, it should be for the detection of such an offence as this, the evidence of which is so hard to be procured by other means. "Many frauds upon the postal, revenue and other laws," remarked Judge Dillon, "are of such a secret nature that they can be effectually discovered in no other way. Accordingly, there have been numerous convictions upon evidence procured by means of what are called decoy letters—that is letters prepared and mailed on purpose to detect the offender, and it is no objection to the conviction, when the prohibited act has been done, that it was discovered by means of letters specially prepared and mailed by the officers of the government, and addressed to a person who had no actual existence. The books contain many cases where such convictions have been sustained": *Reg. v. Rathbone*, 2 Moody's C. C. 310; *Reg. v. Gardner*, 1 Carr. & Kirwan, 628, &c.

"There is a class of cases," continued the judge, "in respect of larceny and robbery, in which it is held that, where one person procures, or originally induces the commission of the act by another, the person who does the act cannot be convicted of these particular crimes, although he supposed he was taking the property without the consent or against the will of the owner. Archbold's Crim. Pr. & Ev. 364; *Reg. v. Eggington*, 2 Bos. & P. 58; *State v. Covington*, 2 Bailey (S. C.), 569; *Dodge v. Brittain*, Meigs (Tenn.)

84, 86; *Alexander v. State*, 12 Tex. 540; 3 Chitty's Crim. Law, 925; 2 East's P. C. 665; 1 Bish. Crim. Law (5th ed.), §§ 262, 263.

"The reason is obvious, viz; The taking in such cases is not against the will of the owner, which is the very essence of the offence, and hence no offence, in the eye of the law, has been committed.

"The offender may be as morally guilty as if the owner had not consented, but a necessary ingredient of legal guilt is wanting. This is strikingly shown by *Rex v. McDaniel*, *Foster*, 121; S. C. 2 East's P. C. 665, where Salmon, McDaniel and others conspired to procure two persons, ignorant of the design, to rob Salmon on the highway, in order that they might obtain the reward at that time given for prosecuting offenders for highway robbery. Salmon, accordingly, went to a particular place fixed upon, with some money, and the two men who were procured, being led there by one of the conspirators, robbed him, and they were afterward prosecuted and convicted, but the conspiracy being afterward detected, the conspirators were indicted as accessories before the fact to the robbery, and, the facts being found by a special verdict, the case was argued before all the judges, who held that the taking of Salmon's money was not a larceny, being done not only with his consent, but by his procurement.' But this principle must be limited to the cases where the consent will, as a matter of law, neutralize the otherwise criminal quality of the act. 1 Bish. Crim. Law (5th ed.), § 262. Thus, where a prosecution was founded on an act of the Legislature, imposing a penalty on any one who should deal or traffic with a slave without a written ticket or permit from the owner, it is held that the offence is consummated, although the trading was done by the slave in pursuance of instructions of the owner, and in his presence, when the accused was ignorant of such instructions and presence. The reason is, that, "like *Eggington's case*, *supra*, this is a contrivance to detect the offender." *State v. Covington*, 2 Bailey (S. C.), 569, 573; see, also, *Regina v. Williams*, 1 Carr. & K. 195; *Regina v. Gardner*, id. 628."

—There are now 149 barristers and 5 solicitors in the House of Commons.