

OFFENCES INDUCED BY POLICE OFFICERS.

instructing him what to do with them. It was contended, on Baker's behalf, that there was no case to go to the jury, as the subject of the indictment had been taken out of the possession of the thief (Hancock) by the detective in the presence of the owner, and so restored to him, and had been then given back for a specified object to the thief, who was shown to be acting under his master's instructions by the fact of the other cigars being given to him also. "At the time the cigar was received by the prisoner, it had been reduced into the possession of the master, or, if you please, of the police, and Hancock was then employed as an instrument to detect Baker," said Cockburn, C. J.; and he held that the conviction should be quashed, as the case was undistinguishable in principle from *Reg. v. Dolan* (24 L. J. M. C. 59, Dears. C. C. 436, 6 Cox C. C. 449), where Lord Campbell evidently assumed that what was done by the police was done in concert with the master, as was also to be inferred in the present case. Huddleston, B., said, "The cigar was taken by the policeman, and the instructions what to do with it were given by the policeman, but then the master was present all the time." In *Reg. v. Dolan*, Cresswell, J., said: "If it were necessary to hold that the policeman by taking the stolen goods out of the pocket of Rogers restored the possession of them to the owner, I should dissent. The goods in the policeman's hands were in the custody of the law, and the master could not have brought trover for them; but when they were given back to Rogers, and the master desired him to go and sell them, the master, I think, may be said to have employed Rogers for that purpose." That learned judge treated the thief as the agent of the master, for the purpose of detecting the receiver. It appears to us that the court were quite right in this case in basing their decision, quashing the conviction, not on the ground that the goods had been reduced into the master's possession (see *Reg. v. Peach*, 38, L. T. N. S. 788), but on the ground of the master and employer having acted in concert in reference to the matter in issue.

In *People v. Collins* (18 *Albany Law Journal*, 271), it was a sheriff and not a policeman who was implicated in inducing to the crime, but he was acting in the capacity of a police officer, and in principle the case is directly in point on the subject in hand. In that case there was an appeal from a judgment of conviction upon an indictment for

burglary, and the facts were as follows:—There was evidence tending strongly to show that the defendant requested Parnell to enter a certain building in the night time, and to steal therefrom a sum of money which he knew to be concealed there; and that the money, when stolen, should be divided between them. The evidence also tended to prove, that instead of accepting and acting upon this proposal, Parnell immediately informed the sheriff of it, who, after consultation with the district attorney, advised Parnell to pretend to the defendant that he accepted the proposition and would carry out the enterprise. It was, thereupon, agreed between Parnell and the sheriff that when the money was taken it should be marked with acid so that it could be identified; and that when the money was delivered to the defendant a signal should be given by Parnell to enable the sheriff to arrest the defendant with the money in his possession. The evidence tended to prove that this programme, as agreed upon by Parnell and the sheriff, was carried into effect; that Parnell entered the building, secured the money, marked it with acid, delivered part of it to defendant, gave the signal as agreed upon, and the sheriff thereupon arrested the defendant with the money in his possession. On this state of the evidence the court instructed the jury that, if it was agreed between Parnell and the defendant that the former should enter the building and steal the money, to be divided between them, and if, in pursuance of the agreement, Parnell did enter the building and take the money and divide it with the defendant he was guilty of burglary, and the jury should so find "without regard as to the part taken in the offence by the witness Parnell, or as to the motives or intentions of said Parnell." This instruction was held to have been erroneous by the Supreme Court of California, saying:—"If Parnell entered the building and took the money with no intention to steal it, but only in pursuance of a previously-arranged plan between him and the sheriff, intended solely to entrap the defendant into the apparent commission of a crime, it is clear that no burglary was committed, there being no felonious intent in entering the building, or taking the money. If the act of Parnell amounted to burglary, the sheriff who counselled and advised it was privy to the offence, but no one would seriously contend, on the foregoing facts, that the sheriff was guilty of burglary. The evi-