the payee executed a note which provided that the assignor should attend to collections;[11] where the holder bank permitted the payee to advance an additional loan upon the mortgage and to accept renewals after assignment of the same without the maker's knowledge.[12] Where a loan broker makes a loan as payee and later assigns the note and mortgage, the assignor is deemed the agent of the assignee; and the maker is not required to demand a return of the instrument.[13]

The dissent in the instant case reasoned that no agency was shown either expressly or by ratification, and that it could not be shown by custom because the note was not returned and plaintiff did not charge the payment against the account of the payee. Therefore, the minority felt a directed verdict for plaintiff proper.[14] The Federal Reserve Bank and its member banks are separate and distinct corporate entities, and no agency relation exists between them except such as arises from contract.[15] The dissenting judge relied on the *Gettleman* case which held that the return of prior notes by the Federal Reserve Bank was merely indicative of the Bank's acquiescence in payment of the notes and did not create a general agency.[16] In the instant case, however, the note was not returned; and the Federal Reserve Bank did not charge payment against the account of the Atlantic City Bank.[17]

Although the majority view may be the more equitable under the facts presented, the dissent seems to rest on a sounder general foundation. The former appears to represent an application of the "two innocent parties" maxim, whereas the latter tends to favor the negotiability of commercial paper.

L. M. B.

BURGLARY AND LARCENY—FEIGNED ACCOMPLICE—PARTICIPATION IN OVERT ACT AS BASIS OF CONVICTION—[Colorado].—To detect one who had boasted of prior crimes, defendant, not an officer, encouraged him in a scheme for

11. Sherrill v. Cole (1930) 144 Okla. 301, 291 Pac. 54.

12. Stock Yards Nat. Bank v. Neugebauer (1935) 97 Colo. 246, 48 P. (2d) 813.

13. James v. Conklin & Hill (1911) 158 Ill. App. 640; May v. Jarvis-Conklin Mortgage & Trust Co. (1897) 138 Mo. 275, 39 S. W. 782; Pfeiffer v. Heyes (1932) 166 Wash. 125, 131, 6 P. (2d) 612, 614. The court quoted from Delaney v. Nelson (1925) 132 Wash. 472, 477, 232 Pac. 292: "In this day of complicated commercial affairs we know that many duly authorized agents have power to collect for others, although they have not possession of the note or instrument upon which the collection is made. The authority to make collection is dependent upon all of the surrounding circumstances and the acts of the parties, and not alone upon the possession by the supposed agent of the note or other instrument upon which payments are being made." Contra, Interstate National Bank v. Koster (1930) 131 Kan. 461, 292 Pac. 805.

14. Federal Reserve Bank v. Algar (C. C. A. 3, 1939) 100 F. (2d) 941.

15. Federal Reserve Bank v. Gettleman (1937) 117 N. J. L. 416, 189 Atl. 86.

16. Ibid.

17. Federal Reserve Bank v. Algar (C. C. A. 3, 1939) 100 F. (2d) 941.

burglary, helped him through the transom of a drug-store, and called police. The trial court ruled that the defendant, having actually participated in the crime, was guilty of aiding and abetting. *Held*, that the question of criminal intent with which the assistance was given by the decoy should have been submitted to the jury.[1]

In the few cases involving indictment of a detective, decoy, or informant, courts in England[2] and the United States have uniformly declared that evidence of criminal intent was lacking to sustain conviction. The Missouri Supreme Court, reversing the conviction of a detective for gambling, said, "On the facts above stated * * * defendant ought not to have been convicted; there was clearly no criminal intent."[3] In *Price v. People*,[4] the defendant warned an officer before proceeding into robbery and gave complete information after the crime. This was held admissible as bearing on intent. Where a saloon-keeper warned an officer of a contemplated robbery and, on the latter's advice, lent a gun with which the robbery was committed, an Ohio court, as in the instant case, reversed the decision because the charge omitted the element of criminal intent.[5]

The question of the degree to which a feigned decoy may participate without becoming an accomplice has arisen most frequently in cases in-

1. Wilson v. People (Colo. 1939) 87 P. (2d) 5.
2. Rex v. Dannelly (1816) 168 Eng. Rep. 818.
3. State v. Torphy (1899) 78 Mo. App. 206.
4. (1884) 109 Ill. 109.
5. Backenstoe v. State (1900) 19 Ohio Cir. Ct. 568, 10 Ohio Cir. Dec. 688.
6. Gambling: Commonwealth v. Baker (1892) 155 Mass. 287, 29 N. E. 512; State v. Lee (1910) 228 Mo. 480, 128 S. W. 987; People v. Noelke (Sup. Ct. N. Y. 1883) 29 Hun. 461. Liquor offenses: Rose v. United States (C. C. A. 6, 1921) 274 Fed. 245, cert. denied (1921) 257 U. S. 655; Commonwealth v. Graves (1867) 97 Mass. 114; State v. Kimmell (1911) 156 Mo. App. 461, 137 S. W. 329; Farley v. Bronx Bath & Hotel Co. (1914) 163 App. Div. 459, 148 N. Y. S. 579; Ausbrook v. State (1913) 70 Tex. Cr. Rep. 289, 156 S. W. 1177; but see Smith v. State (1923) 93 Tex. Cr. Rep. 529, 248 S. W. 685.
Lett v. United States (C. C. A. 8, 1926) 15 F. (2d) 690 (morphine); United States v. Becker (C. C. A. 2, 1933) 62 F. (2d) 1007 (obscene matter in the mails); People v. Swift (S. Ct. 1936) 161 Misc. 851, 293 N. Y. S. 378 (prostitution and procuring); People v. Bennett (1918) 182 App. Div. 871, 170 N. Y. S. 718, 36 N. Y. Cr. Rep. 408 (bribery); People v. Barric (1874) 49 Cal. 342 (receiving stolen property); Commonwealth v. Earl (1927) 91 Pa. Super. 447 (robbery, larceny, and theft); Sanchez v. State (1905) 48 Tex. Cr. Rep. 591, 90 S. W. 641 (robbery, larceny, and theft); Spencer v. State (1907) 52 Tex. Cr. Rep. 289, 106 S. W. 386 (assault with intent to kill); People v. Farrell (1866) 30 Cal. 316 (counterfeit coin); People v. Keseling (1917) 35 Cal. App. 501, 170 Pac. 627 (practicing dentistry without a license).
On intent as a matter for the jury see the following: Elliot v. State (1922) 92 Tex. Cr. Rep. 571, 244 S. W. 1007 (liquor offense); People v. Spaulding (1927) 81 Cal. App. 615, 254 Pac. 614 (infamous crime); State v. McKean (1873) 33 Iowa 343, 14 Am. Rep. 530; Jarrott v. State (1927) 108 Tex. Cr. Rep. 427, 1 S. W. (2d) 619.
7. Rose v. United States (C. C. A. 6, 1921) 274 Fed. 245, cert. denied (1921) 257 U. S. 655; Jarrott v. State (1927) 108 Tex. Cr. Rep. 427, 1 S. W. (2d) 619.
8. People v. Emmons (1908) 7 Cal. App. 685, 95 Pac. 1032.

volving the competency of his testimony. Quite commonly, appellate courts sustain the rulings of the trial judge charging or refusing to charge on the issue of the decoy's being an accomplice under the facts presented, and uphold verdicts based upon the conclusion that he was not.[6] Whether the feigned accomplice possesses a public or official status is immaterial.[7] However, it has been said that no criminal intent is imputable even though public authorities are not consulted.[8]

On the other hand, where a private detective induced a larceny, the intent to deprive the owner temporarily of possession in order to secure a reward was sufficient for conviction.[9] It has been held that the testimony of a prosecuting attorney, who contrived to be bribed so as to entrap the offeror of the bribe, was that of an accomplice.[10] In *Dever v. State*[11] and *State v. Brownlee*,[12] the informant witness was characterized an accomplice though the initial proposition looking to the offense came from the accused. Both have since been distinguished, the *Dever* case because[13] the ruling of complicity applied the test of intent,[14] while the statement in the *Brownlee* case has been declared *dictum*.[15] In a number of cases, participation of the feigned accomplice in the crime, while not held criminal, has nevertheless provoked severe judicial criticism.[16]

The instant case, in emphasizing the element of intent of one who pleads the defense of deception, seems to accord with the prevailing opinion.[17] Criminal responsibility does not attach to participation without criminal intent. V. K.

CONFLICTS—FOREIGN CORPORATIONS—"DOING BUSINESS" FOR PURPOSES OF PROCESS—[Federal].—A foreign corporation having no property, place of business, or agent in Minnesota received orders from plaintiff company by mail, telephone, or telegraph at its Washington, D. C. office. Service of sum-

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9. Slaughter v. State (1901) 113 Ga. 284, 38 S. E. 854, 84 Am. St. Rep. 242.

10. Davis v. State (1913) 70 Tex. Cr. Rep. 524, 158 S. W. 288. See also Sterling v. State (1923) 93 Tex. Cr. Rep. 527, 248 S. W. 684.

11. (1895) 37 Tex. Cr. Rep. 396, 30 S. W. 1071.

12. (1892) 84 Iowa 473, 51 N. W. 25.

13. Holmes v. State (1913) 70 Tex. Cr. Rep. 214, 156 S. W. 1172.

14. Slaughter v. State (1901) 113 Ga. 284, 38 S. E. 854, 84 Am. St. Rep. 242, cited supra, note 9.

15. Backenstoe v. State (1900) 19 Ohio Cir. Ct. 568, 10 Ohio Cir. Dec. 688

16. Connor v. People (1893) 18 Colo. 373, 33 Pac. 159, 25 L. R. A. 341, 36 Am. St. Rep. 295; United States v. Whittier (C. C. E. D. Mo. 1878) Fed. Cas. No. 16,688; Saunder v. People (1878) 38 Mich. 218.

17. Of the above cases see especially: People v. Keseling (1917) 35 Cal. App. 501, 170 Pac. 627; State v. McKean (1873) 62 Iowa 343, 14 Am. Rep. 530; People v. Swift (S. Ct. 1936) 161 Misc. 851, 293 N. Y. S. 378; Commonwealth v. Earl (1927) 91 Pa. Super. 447; Ausbrook v. State (1913) 70 Tex. Cr. Rep. 289, 156 S. W. 1177. See also Talmadge v. State (1922) 91 Tex. Cr. Rep. 177, 237 S. W. 568 (sheriff assisting in larceny not an accomplice).