an offense against a state upon whose soil he has never set his foot, as in putting forth a libel, (*Com.* v. *Blanding*, 3 Pick. 304,) or a threatening letter, (*Esser's Case*, 2 East, P. C. 1125,) or a letter inclosing a forged instrument to defraud the one to whom it is addressed, (*People* v. *Rathbun*, 21 Wend. 509,) or a letter making a false pretense to one who parts with his goods in the place of the receipt of the letter, (*Reg.* v. *Jones*, 1 Eng. Law & Eq. 533; *Reg.* v. *Leech*, 36 Eng. Law & Eq. 589; *Norris* v. *State*, 25 Ohio St. 217.) But it is objected that the charge is that the petitioner received the deposit, and therefore his personal presence was essential to the commission of the act charged. The objection is untenable. "The act may be charged directly as his act, and proof that he did the act through the agency of another will sustain a conviction." *State* v. *Caldwell*, *supra*.

In *Roberts* v. *Reilly*, 116 U. S. 80–97, 6 Sup. Ct. Rep. 291, the supreme court defines the phrase "fugitive from justice," and declares that, to be a fugitive from justice in the sense of the act of congress regulating the subject, "it is not necessary that the party should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution, anticipated or begun, but simply that, having within a state committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense he had left its jurisdiction, and is found in the territory of another." In other words, there need be in his departure from the state no element of conscious flight. It suffices that after the commission of the offense he has merely departed the jurisdiction of the state.

The question then recurs: Was the petitioner within the state of Wisconsin, within the intendment of the law, at the time of the commission of the alleged offense? In *Ex parte Reggel*, 114 U. S. 642–653, 5 Sup. Ct. Rep. 1148, it was ruled that the proof tendered the executive made a *prima facie* case of flight. There, as here, the statement was only that the person demanded "was a fugitive from justice," without statement of probative facts. In *Roberts* v. *Reilly*, *supra*, the supreme court—referring to the question of flight—also declared that "the determination of the fact by the executive of the state in issuing his warrant of arrest upon the demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof." Presumably, therefore, this petitioner was a fugitive from justice. The *onus* is cast upon him to satisfy the court that he was not. He claims that it is conclusively established that he was not such fugitive, because he was not within the demanding state at the time the deposit was made. He has certainly established that fact; but is that conclusive that he was not a fugitive from justice? Or, to express the proposition differently, is one who within the jurisdiction hath set in motion the machinery for crime, and departs the jurisdiction before the consummation of the crime, a fugitive from justice? When the criminal act charged is one as to which it is essential that sev-

eral acts or facts should concur, and which may occur at different times, if the party charged commits within the state any one of the acts constituting the crime, but departs the state before the happening of other acts contemplated and authorized by him, or upon the happening of events necessarily resulting from his act, can he be deemed a fugitive from justice? We are of opinion that he must be so regarded. The purpose of the constitutional provision was that criminals should find no asylum within any state of the Union; that "the law might everywhere and in all cases be vindicated." It will not do to refine too curiously upon such enactments, so that the very design of the law shall prove abortive, so that that shall become a shield and a protection which was designed as a weapon of offense. Can it be that one may not be regarded a fugitive from justice who within a state hires another to kill and murder, but before the killing departs the jurisdiction to avoid the consequences of the murder he has designed? Can it be that, if one within a state makes false representations to procure the goods of another, and departs the state before that other actually parts with his property on the faith of these representations, he may not be deemed a fugitive from justice? Or, to use the forcible illustration of counsel at the argument, if one places a dynamite bomb with clock attachment upon the premises of another, that will explode only after the lapse of a certain time, and death results, so that the act is murder, but departs the state before the explosion to avoid the consequences of his act, is he not to be regarded as a fugitive from justice? To put the question is to answer it. The subsequent event was the consequence of the act, naturally resulting from it. The subsequent event was designed to happen from and by reason of the act done. The event, when it occurs as the consequence of the act, gives quality to the act, rendering it criminal. The result was the foreseen and designed consequence of the act, stamping it as a crime. It is immaterial whether the agency employed be an inanimate object or a sentient being. The result was designed by and naturally flowed from his original act, which, by reason of the result, and the foreseen and intended consequence, is criminal. Departure from the jurisdiction after the commission of the act, in furtherance of the crime, subsequently consummated, is a flight from justice within the meaning of the law. So here, if, as charged, this bank was insolvent or unsafe on and after the 6th day of January, 1890, and if, as charged, Cook had guilty knowledge thereof, and notwithstanding authorized, sanctioned, and directed the keeping open of the bank, and the receipt of deposits, he must be deemed a fugitive from justice, although he departed the state before the deposit was actually received.

The petitioner has not shown that the bank was not insolvent as charged. He has not shown that he was unaware of its condition. He has merely shown that he was a stockholder in the Park National Bank to the amount of $19,000; that that bank was improvidently closed, and has since paid its debts. He has not shown, however, that its capital was unimpaired so that his interest therein was intact. He has not shown that the Bank of Juneau or its owners possessed any means to

meet the $25,000 of deposits charged to have been received. Nor has he shown that the closing of the Park National Bank was the occasion of any loss to the Juneau Bank, or necessarily prevented the continuance of its business. If the complaint lodged against him, and upon which he was surrendered, be true, this bank was insolvent on and after the 6th day of January, 1890, to the knowledge of Cook. Between that date and the closing of the bank on June 20, 1890, deposits were received to the amount of $25,000, which were owing depositors at the time of closing the doors. At that time its entire assets consisted of $3,048 in cash and $2,000 in securities, and Cook is charged to have withdrawn all the capital and all of the deposits except the amount of the assets stated. And on the 23d of June the proprietors of the bank assigned. These allegations we must regard, under the ruling of the supreme court, so far as they bear on the question of flight, as presumptively true. They have not been contradicted. Cook has merely shown that his interest in the Park National Bank was put in jeopardy. But stock in one bank is not capital in another. He has failed to declare what became of the capital of the Juneau Bank, or of the deposits received. He has failed to account for the meagre assets of the bank. So, upon this showing, and in the face of the *prima facie* evidence of flight derived from the action of the executive of Illinois in issuing his warrant of rendition, we are bound to assume, for the purposes of this hearing, with a view to ascertain if he may be regarded a fugitive from justice, that when last within the state of Wisconsin, some two or three weeks prior to the closing of the bank, that bank was unsafe and insolvent, to his knowledge, and was by his direction thereafter kept open for business with the design that his servants should take and receive deposits; that he designed the fraud which was consummated by the actual receipt of the deposit, departing the jurisdiction intermediate the design and the act to accomplish that design and the actual receipt of the deposit. He was, therefore, in our judgment, a fugitive from justice within the intendment of the law.

It is further urged that, being rendered by the executive of Illinois for trial upon the offense charged, Cook cannot be held or tried upon any other charge until he has had proper opportunity to return to the state of Illinois. It was held in *U. S.* v. *Rauscher*, 119 U. S. 407, 7 Sup. Ct. Rep. 234, that when one was extradited by the government of Great Britain, under a treaty, for trial upon the particular offense charged, he cannot lawfully be tried for any other offense; that he is clothed with the right to exemption from trial for any other offense, until he has had opportunity to return to the country whence he was taken for the purpose alone of trial for the offense specified in the demand for his surrender. If the principles of extradition are applicable and controlling in interstate rendition, this ruling must be held to determine the right of exemption, notwithstanding the decision of the supreme court of Wisconsin in *State* v. *Stewart*, 60 Wis. 587, 19 N. W. Rep. 429. It is not essential, however, that we should at this time pass upon this question, as the petitioner must be remanded to the jurisdiction of the state court.

If, after trial upon the charge upon which he was surrendered, he should be held upon another charge, or should be placed upon trial for such other charge before his trial upon the charge for which he was surrendered, the federal tribunals will be accessible to him, if his right be thereby invaded.

UNITED STATES *v.* BARDENHEIER.

(District Court, E. D. Missouri, E. D. January 4, 1892.)

1. REVENUE LAWS—ALTERATION OF INSPECTION STAMP.
   The "obliteration" of a portion of a government inspection mark or stamp is a "change or alteration" thereof, within the meaning of Rev. St. U. S. § 3326.
2. SAME—INFORMATION.
   An information which avers that the defendant "did unlawfully change and alter" the marks and stamps, sufficiently shows that the act was done willfully and intentionally.
3. SAME.
   An information under Rev. St. U. S. § 3326, for using casks or packages previously inspected for the sale of other spirits, or spirits of a different quality from those contained in them at the time of inspection, must show that the change was brought about by filling them with other spirits after the original contents, or a part thereof, had been withdrawn; and a count alleging that spirits of 102 degrees proof were fraudulently sold in casks marked "105 degrees proof," without stating the cause of such change in quality, is defective.

At Law. Information against John Bardenheier for violation of the internal revenue laws.

STATEMENT BY THAYER, DISTRICT JUDGE.

This is an information containing eight counts, under section 3326, Rev. St. The first series of counts (Nos. 1, 2, 5, and 6) are for altering "distillery warehouse stamps" and "inspection marks" on certain barrels of distilled spirits, by "obliterating and making illegible" the dates of such stamps and marks. In the second series of counts (Nos. 3, 4, 7, and 8) it is charged, in substance, that defendant unlawfully and fraudulently used casks having thereon United States internal revenue inspection marks, showing distilled spirits of 105 degrees proof to be contained therein, for the purpose of selling therein to one George Autenrieth distilled spirits of 102 degrees proof, and for the purpose of falsely representing to Autenrieth that the spirits sold were of 105 degrees proof, and then and there cheating and defrauding him.

George D. Reynolds, U. S. Dist. Atty.

Hough & Hough, for defendant.

THAYER, District Judge, *(after stating the facts.)* The chief objections to the first series of counts are that an "obliteration" of a portion of a government inspection mark or stamp is not a "change or alteration" thereof, within the meaning of section 3326; and, *secondly*, that the counts are bad because it is not alleged that the marks and stamps were knowingly and intentionally altered in the respects stated.