the other letter, the money from which was found in the barrel. Such, in brief, are the facts. Upon these facts the defense asked the court to instruct the jury that a decoy letter, addressed to a fictitious person, could not be the subject of theft. The court declined to give the instructions, and, under decisions of the supreme court of the United States, instructed the jury that such a letter could be the subject of theft.

W. H. White, U. S. Atty., cited the following authorities:

U. S. v. Rapp, 30 Fed. 818; U. S. v. Hamilton, 9 Fed. 442; U. S. v. Cottingham, 2 Blatchf. 470, Fed. Cas. No. 14,872; U. S. v. Foye, 1 Curt. 364, Fed. Cas. No. 15,157; U. S. v. Matthews, 35 Fed. 890; Goode's Case, 159 U. S. 663, 16 Sup. Ct. 136; Montgomery's Case, 162 U. S. 410, 16 Sup. Ct. 797; Price v. U. S., 17 Sup. Ct. 366.

HUGHES, District Judge. The circuit courts of the United States have not been disposed to encourage the use of decoy letters as the basis of criminal prosecutions for depredations upon the mails. There is something repugnant in the idea of the government, by art and contrivance, entrapping one of its citizens into the commission of crime in order to subject him to criminal prosecution; and such prosecutions have been felt by the courts to be more or less objectionable in morals and in policy. The use of decoy letters for the purpose of discovering who the mail robbers are is in itself probably necessary, and, if objectionable, is at least tolerable, on the ground of necessity. But to go further, and, after the citizen has been seduced by the government into robbing the mail, to prosecute him criminally for the act, is more or less offensive to public sentiment. I should have been disposed to follow the rulings of some of the circuit courts in discouraging these prosecutions, but I think the supreme court has decided, unmistakably, not only that the use of decoy letters is necessary to the detection of certain offenses, but that criminal prosecutions based on decoys must be sustained. I will therefore give to the jury the instructions asked for by the district attorney, and will refuse to give the instructions offered by counsel for the defense.

HOLMES v. HURST.

(Circuit Court of Appeals, Second Circuit. May 8, 1897.)

COPYRIGHT—VALIDITY—SERIAL PUBLICATION.

The publication of a work in serial form in a monthly magazine, before depositing a copy of the title, as required by the statute, invalidates a copyright afterwards obtained.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This is an appeal from the circuit court, Southern district of New York, dismissing complainant's bill. 76 Fed. 757. The suit is brought to restrain publication of the well-known book written by Oliver Wendell Holmes, and entitled "The Autocrat of the Breakfast Table." On November 2, 1858, the title of the book was deposited in pursuance of the statutes of the United States relating to copyrights. On November 22, 1858, a copy of the book was delivered to the clerk of the district court, as therein provided, and the other statutory require-

ments were duly complied with. Thereafter the statutory provisions concerning renewals were complied with, whereby the copyright was extended for a period of 14 years from July 12, 1886. Complainant, as ancillary executor, holds the legal title to the copyright. The defendant contends that the author never became entitled to the benefit of the copyright act in force in 1858 (the act of 1831), for the reason that he did not, before publication, deposit a printed copy of the title, as required by the fourth section of the act, which reads: "Sec. 4. And be it further enacted: That no person shall be entitled to the benefit of this act unless he shall before publication deposit a printed copy of the title of such book," etc. The evidence shows that the book was printed or published in parts or fragments, as it was written (such publication being without copyright), in the Atlantic Monthly, beginning with the number of the magazine for November, 1857, and continuing from month to month until the number for October, 1858, in which number the last part or fragment of the book appeared,—a full month before deposit of the title. Each of these parts, as it appeared, was entitled "The Autocrat of the Breakfast Table"; and none of the numbers of the Atlantic Monthly were copyrighted. The judge who heard the cause at circuit reached the conclusion that this was a publication, and the same opinion was expressed in the United States circuit court for the Northern district of Illinois in a suit against another alleged infringer. Holmes v. Donohue, 77 Fed. 179.

Rowland Cox, for appellant.
Andrew Gilhooly, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. It seems unnecessary to add anything to the opinion of the circuit court and the one cited above from 77 Fed. The complainant's brief has much to say as to the author's having no "intention to abandon." Of course, there are cases where knowledge of a person's intent is materially helpful towards the determination of what his actions really were. The statue or picture exhibited to friends in the artist's studio, the MS. submitted to critics for suggestions as to alteration, the books distributed for purposes of future sale, are cases in point. But where an author causes what he has written to be printed, and then allows it to be put publicly on sale, offering copies to whomever chooses to buy, and actually selling such copies by the thousand, it is idle to say that there had been no publication of what is thus printed and given to the world, because the author intended thereafter to combine what he has thus sold with other writings of his own, and then to apply for copyright on the combination. The statute, it will be observed, says nothing about "abandonment" or "intention to abandon." Copyright is refused where the printed copy of the title has not been filed "before publication." As to so much of the book as has been published before filing title the author cannot under this statute obtain copyright. If he has published part of the book only, he may no doubt copyright the remainder; but where he has actually published and sold in separate parts every chapter and sentence from the first word to the last, it is difficult to conceive how, in the face of this statute, he could nevertheless obtain a copyright for the book as a whole. He might have copyrighted each part monthly as it appeared. Suppose he had done so, and then sold each copyright to some one else. What rights would each purchaser have? Clearly, to enjoin any one, even the author, from

offering for sale copies of the particular part covered by the particular copyright the purchaser owned. But would it be contended for a moment that, although the author could not lawfully sell copies of any single part thus copyrighted (and the copyright transferred for value to another), he might nevertheless sell copies of all the parts, if printed and bound together in a single book, justifying his infringement of any one copyright by the fact that he at the same time infringed eleven others. The proposition contended for that the whole book is something other or different from the aggregation of all its parts is a refinement of which we do not think the statute is susceptible. The decree of the circuit court is affirmed, with costs.

J. L. MOTT IRON WORKS v. HENRY McSHANE MANUF'G CO.

(Circuit Court, S. D. New York. April 8, 1897.)

PATENTS — DURATION OF RIGHT — FOREIGN PATENT FOR SAME INVENTION — SUPPLY TANKS.

The Robertson patent, No. 245,318, for an improvement in supply tanks for water-closets, etc., which covers, in substance, a balance float valve, in combination with other parts, in a tank for intermittent supply, is for substantially the same invention covered by the earlier Canadian patent, No. 7,128, to the same inventor, and consequently expired with the said Canadian patent, under the provisions of Rev. St. § 4887.

W. P. Preble, Jr., for plaintiff.
Thomas A. Connolly, for defendant.

WHEELER, District Judge. This suit is brought upon United States patent No. 245,318, dated August 9, 1881, and granted to John Robertson, of Montreal, for an improvement in supply tanks. Canadian patent No. 7,128, dated February 23, 1877, granted to the same inventor for an automatic hydraulic supply tank, and which expired before this suit, is, among other things, set up as a defense, by limitation of this one. The inventor, in the specification of the Canadian patent, says:

"My invention relates to two floating bodies, which are confined within a case that is intended to contain a reservoir of water for the use of water-closets and urinals, or for any other purpose to which it can be made applicable. The action of these two bodies in the case is as follows: First, the case is filled with water from the supply pipe in the following manner: The pressure of water passing from the supply pipe into the case is regulated by the size of the aperture, where the water passes through into the case, forcing downwards the floating body or ball. As soon as the water rises sufficiently high in the case to float the ball, the valve, which is attached to the top of a spindle fastened onto this ball, closes the small aperture through which the supply flows. The case is now charged with water, ready for use. The second part of my invention relates to the action of the smaller floating body, to the lower part of which is attached a valve spindle. This valve may be raised up by a connecting rod, or by any other suitable mechanical arrangement. When it is required to draw water out of the case for flushing a water-closet, or for other purposes, it is done by the action of a lever pressing up the valve, which allows the water to rush out of the pipe. This pipe is made of such dimensions that the water rushing out from the case or tank through this pipe to supply the water-closet cannot pass down it as fast as it flows under the