

ABSTRACTION OF OFFICIAL PAPERS, ETC.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

IN REFERENCE TO

The abstraction of papers from the files of the State Department.

MAY 3, 1852.

Referred to the Committee on the Judiciary.

To the Senate and House of Representatives of the United States :

At the close of the commission to adjudicate upon the claims of citizens of the United States under the treaty of Guadalupe Hidalgo, I directed a list to be made of papers which had been presented to that commission, and pursuant to the act of Congress, approved 3d March, 1849, the papers themselves to be carefully arranged and deposited for safe-keeping in the Department of State. I deemed all this necessary as well for the interest of the claimants, as to secure the government against fraudulent claims which might be preferred hereafter. A few days since I was surprised to learn that some of these papers had been fraudulently abstracted by one of the claimants; and upon the case being made known to me by the Secretary of State, I referred it to the Attorney General, for the purpose of ascertaining what punishment could be inflicted upon the person who had been guilty of this offence.

I now communicate to you his opinion, and that of the attorney of the United States for this District, by which you will perceive that it is doubtful whether there be any law for punishing the very grave offence of fraudulently abstracting or mutilating the papers and public documents in the several departments of this government. It appears to me that the protection of the public records and papers requires that such acts should be made penal, and a suitable punishment inflicted upon the offender, and I therefore bring the subject to your consideration, to enable you to act upon it should you concur with me in this opinion.

MILLARD FILLMORE.

WASHINGTON, March 26, 1852.

OFFICE OF THE ATTORNEY GENERAL,

March 18, 1852.

Your letter of yesterday relating to copies of invoices, manifests, bills of lading, letters, and a deposition clandestinely abstracted from the possession of a clerk in the Department of State, who had charge of the books and papers of the late board of commissioners for examining and adjusting claims of the citizens of the United States upon the Mexican republic has received due consideration.

The question is, whether the fraudulent abstracting of those papers in the manner, and from the office where they were deposited for safe-keeping, as directed by law, "constitutes a larceny within any provision of the statutes of the United States." The fifteenth section of the act of April 30, 1790, Statutes at Large, by Peters, vol. 1, p. 115, does not include this case.

The third section of the act of March 3, 1825, Statutes at Large, vol. 4, p. 115, does not comprehend the case.

The ninth and twelfth sections of the act approved March 2, 1831, appears to me not to provide for this case, because the instruments of writing taken and carried away were neither of them "for the payment or delivery of money or other valuable thing."

The fourteenth section of that act, p. 450, chap. 37, enacts "That all capital felonies and crimes in the District of Columbia, not herein specially provided for, except murder, treason, and piracy, shall hereafter be punished by imprisonment and labor in the penitentiary of said District for a period not less than seven nor more than twenty years."

This section is not applicable to the case in question, because neither the common law nor any statute in force in the District makes the abstracting of those papers a capital felony or crime.

The fifteenth section of that act enacts "that every other felony, misdemeanor, or offence not provided for by this act, may and shall be punished as heretofore, except that," &c.

The provision of this section not having reference to any statute of the United States defining and punishing such acts of purloining papers and instruments leads, however, to the inquiry whether, by the laws of Maryland, adopted by the Congress (by the act of February 27, 1801, vol. 2, Statutes at Large, by Peters, p. 104, chap. 15, s. 1,) as existing on the 27th of February, 1801, for the government of that part of the District of Columbia which was ceded by Maryland to the United States, the act of abstracting papers or documents from the files of any public office, such as stated in the reference for my opinion, constitutes a larceny?

The common law of England, as in force in Maryland at the passage of the act of Congress just before mentioned, continues to be in force in that part of the District so ceded by Maryland. But, by the common law, the act of purloining such papers and documents, and instruments as are described in the statement submitted for my opinion, did not constitute a felony. (Black. Com., book 4, chap. 10, p. 128, and chap. 17, p. 234.

I have found no statute of Maryland, adopted by the United States, as before mentioned, which applies to the case as stated. The statute of Maryland, of April, 1715, (Kilty's ed., vol. 1, chap. 11,) "applies only to embezzling, impairing, varying, or altering any will or record whereby the estate of inheritance or freehold of any person whatsoever, shall be defeated, injured, or any ways altered."

This examination, made as diligently and as searchingly as the pressing occasion would permit, inclines me to the conclusion that the act done (howsoever reprehensible and opprobrious) does not constitute a larceny in law.

I would, however, most respectfully suggest that the case be referred to the attorney of the United States for the District of Columbia, who is familiar with the laws of the District relative to crimes and offences cognizable in the courts for the District.

With very high respect, yours, &c.,

J. J. CRITTENDEN.

His Excellency MILLARD FILLMORE,
President of the United States.

OFFICE OF UNITED STATES ATTORNEY, D. C.
Washington, March 25, 1852.

SIR: Your communication of the 22d instant, concerning the fraudulent abstraction of certain papers from the Department of State, with an accompanying opinion of the Attorney General, was handed to me yesterday in the criminal court, while a case was under argument.

The examination which I have since made has not enabled me to discover any law of Maryland in force in this district, or any law of the United States, declaring such an act to be a larceny. But according to a series of decisions in England, from 1810 to 1845, an indictment would lie for stealing "so many pieces of paper," as goods and chattles; and it would be sufficient if the value were that of the smallest current coin. In this case, there were, probably, among the papers, blank sheets of the intrinsic value of the smallest coin of the United States; and the sheets, written and unwritten, would be of a greater value as an article of sale to the paper-makers.

Larceny of property under the value of five dollars, is punished here by fine and imprisonment in the county jail, at the discretion of the court.

Some of the English cases hold it to be enough that the property stolen should be of value to the owner, though having none to the rest of the world.

In a case decided by the supreme court of New York, in 1810, it was held that taking away a letter from another, was not a larceny; the letter being of no intrinsic value, nor importing any property in possession of the person from whom it was taken. The last of the English cases to which I have alluded, was decided by the fifteen judges in 1845.

From the English doctrine that it is enough that the papers stolen should be of value to the *owner*, it would seem to follow, that such value ought to be the *measure of value* to the jury; and in the particular case, the value of the papers to the owner may be five dollars or more. If so, and if the English doctrine can be maintained, the punishment would be imprisonment and labor in the penitentiary for a period not less than one nor more than three years. The papers sent are herewith returned.

I am, sir, with the highest respect, your obedient servant,

P. R. FENDALL.

To the PRESIDENT OF THE UNITED STATES.

Case.—A. B. had a claim against Mexico; which was submitted to, and decided by the late commission sitting on Mexican claims. After the decision, the papers, as is usual, were deposited in the Department of State.

Some time afterwards, A. B. went to the clerk's room where the papers were deposited, and asked the clerk to allow him to look at them; which was done. He sat down by a table, examined the papers, and abstracted six or eight of them. These were mostly copies of documents, such as manifests, invoices, bills of lading, &c., &c., one deposition, and a letter or two.

The question is, whether this act constitutes a larceny within any provision of the statutes of the United States?