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inal grantee, or a *bonâ fide* purchaser under him, without notice). For the reasons already stated, such an instruction, so generally stated, ought not to have been given.

Upon the whole, we are all of opinion, that the judgment of the circuit court ought to be affirmed, with costs.

Judgment affirmed.

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UNITED STATES, Appellant, *v.* The Brig BURDETT.

Evidence.—Letters.—Declarations of agent.—Penal actions.—Presumption of innocence.

An information was filed in the district court of the United States, on the 1st of October 1832, against the Brig Burdett, alleging her to have been forfeited to the United States, for a violation of the registry acts, she being owned in whole or in part by a foreigner, a subject of the king of Spain. The vessel was purchased by an agent of George S. Steever, a native citizen of the United States, and was sent to the Havana; from the time of her arrival at Havana, she was placed under the direction of J. J. Carrera, a merchant of that place, and all her voyages directed by him, professing to act as the agent of Mr. Steever; part of the cost of the brig was paid in cash by Mr. Steever to his agent, on his return to the United States, and the balance charged by the agent and settled for in account with Mr. Carrera. The counsel for the United States offered in evidence certain letters written by Mr. Carrera to Captain Nabb, the master of the Burdett, during her several voyages, which had been directed by him, and which letters related to the business and employment of the Burdett; the letters were objected to as evidence, and were admitted in the district and circuit court, to which latter court the case was taken on an appeal by the claimant of the vessel: *Held*, that the letters were not legal evidence.

The confessions of an agent are not evidence to bind his principal, nor is his subsequent account of a transaction to his principal, evidence; but his acts, within the scope of his powers, are obligatory upon his principal, and those acts may be proved in the same manner as if done by the principal; the agent, acting within his authority, is substituted for the principal in every respect, and his statements, which form a part of the *res gestæ*, may be proved.

The object of this prosecution was to enforce a forfeiture of the vessel and all that pertains to her, for a violation of a revenue law; the prosecution was a highly penal one, and the penalty should not be inflicted, unless the infraction of the law were established beyond reasonable doubt.

That frauds are often practised under the revenue law, cannot be doubted, and that individuals who practise these frauds are exceedingly ingenious in resorting to various subterfuges to avoid detection, is equally notorious; but such acts cannot alter the established rules of evidence, which have been adopted as well with reference to the protection of the innocent, as the punishment of the guilty.

If a fair construction of the acts and declarations of an individual do not convict him of an offence, if the facts may be admitted as proved, and the accused be innocent, should he be held guilty of an act which subjects him to the forfeiture of his property, on a mere presumption? He may be guilty, but he may be innocent. If the scale of evidence does not preponderate against him—if it hang upon a balance, the penalty cannot be enforced; no individual should be punished for a violation of law, which inflicts a forfeiture of property, unless the offence shall be established beyond reasonable doubt. This is a rule which governs a jury in all criminal *prosecutions; and the rule is no less proper for the government of the court, when exercising a maritime jurisdiction.¹ [*683

¹ If the scale of evidence hangs in doubt, the verdict should be in favor of the claimant; the jurors ought to be clearly satisfied that the allegations of the informations are true; but if they are so satisfied, they may render a ver-

dict for the government, even though the proof falls short of what is required in a criminal case prosecuted by indictment. *Lilienthal's Tobacco v. United States*, 97 U. S. 272.

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APPEAL from the Circuit Court of Maryland. The case is fully stated in the opinion of the court.

Butler, Attorney-General, and *Williams*, District-Attorney of the United States for the district of Maryland, for the appellants; *Meredith* and *Kennedy*, for the claimant of the brig Burdett.

MCLLEAN, Justice, delivered the opinion of the court.—This case was brought into this court, by an appeal from the circuit court of Maryland. The appellants, by the attorney of the United States, filed in the district court of Maryland, an information, on the 1st of October 1832, for the purpose of enforcing a forfeiture of the brig Burdett, her tackle, apparel and furniture, to the use of the United States, on the ground, that the brig, though registered as a vessel of the United States, was then, and still is, owned, in whole or in part, by a subject of a foreign prince, viz., by a certain J. J. Carrera, or a certain J. Carrera, a subject of the king of Spain, and resident abroad; which ownership was known to the persons owning or pretending to own the whole or a part of the brig, in violation of the act of congress, &c.

The vessel having been attached, a claim was filed by George G. Steever, in which he alleged, that the brig was originally built in the state of North Carolina, and purchased by him of the original owner, in May 1831, and thereupon registered in his name, as sole owner, he being a citizen of the United States; and denied, that the brig was, at the time she was registered, or at any time since, owned, in whole or in part, by Carrera, or by any other subject of any foreign prince or state. The claimant also averred, that at the time of obtaining her registry, the vessel was, and ever since *684] had been, his sole property. *The vessel having been appraised at \$6000, and security having been given by the claimant to abide by the final order of the court, she was restored to him.

On the hearing of the cause, the testimony and depositions of several witnesses were introduced, and much documentary evidence offered on the part of the United States. Several letters, proved to be in the handwriting of J. J. Carrera, were offered in evidence on the part of the United States, to the reading of which the counsel for the claimant objected, on the ground that Carrera was not a party to the case, which objection was sustained by the court. The district court dismissed the information, and that decree, on appeal, was affirmed by the circuit court.

In the argument, the counsel for the appellants take two grounds, on which they contend the decree of the circuit court should be reversed. 1. That the letters of Carrera were improperly rejected. He was shown by all the witnesses to be the accredited agent of the claimant, and his letters were, moreover, a material part of the *res gestæ*. 2. The evidence shows that the chief, if not the sole ownership of the brig, was in Carrera.

Much reliance is placed on the testimony of Chester and Cox, two of the witnesses, to establish not only the agency of Carrera, but other matters material in the case. The former states, that he lived three years in the house of Joseph Carrera, preceding the last of June 1832. He was there during the whole of the operations of the Burdett, at Havana. He states, that Steever sent an order to Colonel Tenant, of Baltimore, to purchase for him a vessel, which was to be sent to him at Havana, and if he was absent,

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to the house of Carrera, in which the witness was a partner to a limited extent. In obedience to this order, the Burdett was sent, consigned to the house of Carrera, in the absence of Steever, who had left the Havana, a few days before the arrival of the vessel, under the command of Captain Nabb. He frequently conversed with Joseph Carrera, and his nephew, J. J. Carrera, respecting the Burdett, and never heard either of them assert any ownership or interest in the vessel. Carrera was made the ship's husband, and had positive orders from Steever, in his absence, to do with her as *if she were his own, and to employ her on freight to the best [*685 advantage. When Steever was near enough to communicate, he gave positive and specific orders. Witness has often seen his letters on the subject. The vessel performed several voyages under the orders of Carrera; and after her return from New York, having been on shore once or twice, some repairs were made under the direction of Captain Nabb, which Carrera was apprehensive might not be sanctioned by Steever. The witness thinks about \$11,500, at six and eight months credit, were paid for the vessel.

Richard G. Cox states, that he is a clerk of Colonel Tenant's, and conducts all his business; and that the Burdett was purchased by Colonel Tenant, on the order of Steever, who was then at the Havana, and the vessel was sent there, subject to this order, and in his absence, to Carrera. Before the arrival of the vessel, Steever had sailed for Boston, and when he returned, being informed of the purchase, he paid Colonel Tenant \$11,000, in part of the purchase-money. The vessel, including equipments, cost about \$13,000. The rest of the purchase-money was paid by the house of Joseph Carrera. The witness has had correspondence with Carrera, respecting the vessel, and has insured her by orders from Carrera, on account of Steever. He has seen the correspondence with the house of Carrera, and has never heard or seen anything which goes to show that the Carreras had any interest in the vessel, or that Steever was not the owner.

William W. Russel, a merchant of the city of New York, states, that he was consignee of the brig Burdett, in December 1831, at which time Nabb was master. The vessel came from Havana and Matanzas, under orders from Joseph Carrera, with whom the witness corresponded respecting said vessel. The witness understood from the letter of the 15th of November 1831, brought by her to him, that she was owned by G. G. Steever, of Baltimore. Witness accounted with Joseph Carrera for the freight of the brig, but he has no knowledge that Carrera has any interest in her.

In a letter from Joseph Carrera to Russel, the above consignee, dated the 15th of November 1831, he says, "I have requested Captain Nabb to value on your good self, on his arrival; *and I beg leave to solicit your attention in procuring a good return freight to Havana for that vessel, [*686 as well as passengers, &c. And on reference to Mr. Steever's instructions, who, I presume, will have left Baltimore for Mexico, Captain Nabb is authorized to take a voyage to Europe, &c. Of a voyage to Europe, Mr. Steever's instructions are constructive, as regards the benefit to be derived from it. Whatever may be the destination of the Burdett from your port, I beg to request that you will advise Colonel Tenant, in the absence of Mr. Steever, to have insurance effected on the brig." And again, "my control over this vessel is limited to give her employment, and to address her to my friends,

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wherever she may be found ; but where the owner can himself attend to her concerns, if he be so disposed, I shall feel obliged to you by transferring her to him."

Another letter, signed by both the Carreras, dated Havana, the 11th of January 1832, to Mr. Russel, says, "I much regret that the prospect of procuring a full freight for this vessel, for this port, was not encouraging, &c. I rely, however, on your friendly exertions to give her the best employment," &c. And in another letter, dated the 24th of January 1832, to Mr. Russel, it is stated, "I have the pleasure of handing duplicates of my respects of the 11th current, and to own receipt of your regarded favor of the 27th and 30th ultimo, and 11th instant ; this last advising, that you intended to despatch the Burdett for this port, &c. I feel confident you have used your utmost exertion in giving to this vessel the best employment," &c. And in a letter from the same person to the same, dated the 8th of February 1832 : "The Burdett arrived on the 30th, in eleven days' passage. All the accounts relating to her will be examined and booked in conformity. I have not, as yet, determined on the direction to give the Burdett."

Mr. Russel wrote to Joseph Carrera, dated New York, December 31st 1831, "I acknowledge the receipt of your esteemed favor of the 12th ultimo, handed me by Captain Nabb of the Burdett, which vessel arrived on the 12th, after having been off the coast for seven days, and suffering some slight injury in her upper works. The extent of the damage will, I presume, however, not amount to a claim on the underwriters ; but should it prove otherwise, the necessary documents will *be forwarded to Colonel *687] Tenant, in order that he may claim them." "I have to return you my thanks for the favor done me in the consignment of this vessel, which, however, will be promptly surrendered to Mr. Steever, should he be in this country, and be desirous of giving his personal attention to her concerns," &c. Another letter, dated New York, 27th December 1831, from the same to the same, states exertions used to procure a full freight for the Burdett. And there is contained in the record several other letters from Mr. Russel to J. Carrera, dated at New York, in January 1832, all of which relate to the freight of the Burdett.

Certain letters from J. J. Carrera to Captain Nabb, numbered in the record, 1, 2, 3 and 4, were offered in evidence by the district-attorney, and were objected to by the claimant. The letter numbered 1, is dated at Havana, November 15th, 1831, and contains particular instructions to Captain Nabb, as to the voyage of the Burdett, the consignee in New York, and the subsequent employment of the vessel, after the discharge of her cargo. The letter numbered 2, and dated Havana, 26th November 1831, is of the same import.

Letter numbered 3, is dated Havana, 12th May 1832, in which Carrera says, "Your letters of the 13th and 23d April last have been received, and am sorry to hear of the damage the Burdett has experienced, in a tremendous gale of wind, near the Bermudas. The certificate of survey, as well as the estimate of repairs to be made on the Burdett, has been received ; the amount of repairs is enormous, but we must conform to it, if there should be no other remedy. No doubt the underwriters will have to reimburse the amount. I wrote to Colonel Tenant, a few days ago, authorizing him to arrange the business of the Burdett as well as he can, and for the best

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of my interest. I entreat you to consult him on the business, and do for the best. The expenses and repairs are heavy, and surpass my expectations. Mr. Tenant has been authorized by me to pay the amount required to fit out the vessel; but if he thinks best to sell my four hundred boxes of sugar, he is at liberty to do so, for they are insured at Baltimore."

*In letter numbered 4, and dated at Havana, 28th June 1832, Mr. Carrera says, "I am in receipt of your valued favors of the 1st, 11th [688 and 21st May last, by which you inform me of the last survey held on the brig Burdett, and that she was condemned, and to be sold at public auction; but, at the request of our friend, Colonel Tenant, the sale of the said vessel was postponed, and that the said Tenant had sent two gentlemen in order to have a private survey, &c. I am informed, that the Burdett's cargo for Hamburg had been shipped on board the brig John; this vessel having been chartered by yourself, with the approbation of Mr. Tenant, and that she was to sail, &c. By this time, I presume, you have seen Mr. Steever, and hope this friend will have succeeded in his claim against the underwriters for a partial or a total loss on said vessel. I beg of you to do all in your power, that we may be able to collect what is so justly due to the interested in that vessel."

And the district-attorney offered to read other letters from Carrera to Captain Nabb, numbered on the record 5 and 6, if the claimant would withdraw his objections to the above letters being read as evidence; but the objections were not withdrawn, and the same was sustained by the court.

The first question for the consideration of the court is, whether the above letters were properly rejected by the court below. It is objected, that these letters contain but a part of the correspondence on the same subject and that the non-production of the whole is unaccounted for. The letters referred to were addressed by Carrera to Captain Nabb, and it may be, that some of the letters written by him, and also by Carrera, in relation to the same matter, are not produced. As this correspondence is not in the possession of the plaintiffs, it is impossible for the district-attorney to produce it.

If Carrera were to be treated as a mere agent, he might have been examined as a witness, and compelled to produce or swear to any letters in his possession, which have a bearing on the ownership of the vessel. But the forfeiture is attempted to be enforced, on the ground, that this same person is the owner of the vessel, in whole or in part. In this view, he would be required to swear in a matter *which concerns his own interest; as his oath, if received, would go directly to establish or to refute the [689 important point of ownership of the vessel. It was for this reason, it is presumable, that Carrera was not examined as a witness. So far as the proof of acts done within the scope of his agency may be essential, it may be made by other evidence than his own oath. The proof of Carrera's agency, in reference to the Burdett, is clear; and to consider him in this light, is the most favorable view for the claimant which can be taken of the case. Carrera must have acted as agent, or as principal, in regard to this vessel. He planned her voyages, gave directions as to her freight, appointed consignees, and paid for the repairs of the vessel. That he did these things, as the agent of the claimant, is the only ground on which his right can be sustained; for if Carrera acted in any other capacity, it must

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be fatal to the claim of Steever. Under the circumstances of the case, it does not seem, that the objection, on the ground that all the correspondence was not produced, should have been sustained by the court. If the letters offered contained facts which were competent evidence in the case, the principal could not object ; because the correspondence referred to, was either in his possession, or the possession of his agent.

But it is insisted, if the whole of the correspondence were produced, it would be inadmissible, because Carrera is no party in the case. The confessions of an agent are not evidence to bind his principal ; nor is his subsequent account of a transaction to his principal, evidence. But his acts, within the scope of his powers, are obligatory upon his principal, and those acts may be proved in the same manner as if done by the principal. The agent, acting within his authority, is substituted for the principal in every respect ; and his statements, which form a part of the *res gestæ*, may be proved.

But it is not material to decide the point raised on the objection of these letters. They may be considered as a part of the record, and as presenting all the facts which they contain, in connection with the other facts in the case, for the consideration of the court. And if on this broad view of the *690] merits, the *prosecution shall not be sustained, it will become wholly unnecessary to determine any question as to the admissibility of evidence.

The object of the prosecution against the Burdett is to enforce a forfeiture of the vessel, and all that pertains to it, for a violation of a revenue law. This prosecution then is a highly penal one, and the penalty should not be inflicted, unless the infractions of the law shall be established beyond reasonable doubt. That frauds are frequently practised under the revenue laws, cannot be doubted ; and that individuals who practise these frauds are exceedingly ingenious in resorting to various subterfuges to avoid detection, is equally notorious. But such acts cannot alter the established rules of evidence ; which have been adopted as well with reference to the protection of the innocent, as the punishment of the guilty. A view of the evidence in this case, including the rejected letters, must create a suspicion of fraud in the mind of every one who reads it with attention. Steever went to the Havana, as supercargo of a vessel owned by Colonel Tenant. His means were limited. While at the Havana, he wrote to Colonel Tenant to purchase for him a vessel ; and the Burdett was purchased, and sailed for Havana, with a letter to Steever, which, in his absence, was to be opened by Carrera ; Steever being absent, the letter was opened by Carrera ; who, from that time to the commencement of this prosecution, gave all necessary directions respecting the Burdett ; with, as it would seem from the evidence, little or no interference by Steever. And in addition to this, with the exception of \$1100, it appears, the Burdett was paid for by the house of Carrera. These facts, and others which are on the record, do authorize a suspicion that the vessel was purchased in the name of Steever, for the benefit of Carrera. And we think, that the proceeding instituted by the district-attorney, in this case, was justified from the facts which have been developed.

But the inquiry now is, not whether the prosecution was properly instituted, but whether the evidence makes out a forfeiture, in such terms as

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to require its enforcement by the court. Admitting the facts which have been stated, as creating suspicion, are they conclusive? It appears, that the vessel was *purchased by the order of Steever, and that she was dispatched to the Havana, subject to his order. That he made the [*691 first payment of \$1100, and that he constituted Carrera his agent, to control the vessel, in every respect, as if she were his own, in the absence of Steever. And that in many of the letters of Carrera, respecting the vessel, her destination, her freight, or her repairs, he referred to Steever, as her owner, and instructed the consignee and other agents to apply to Steever for direction, if he were in the United States. That in all these cases, Carrera professed to act in subordination to the instructions of his principal. The vessel was entered in the name of Steever, and she was insured as his property. And as to the instructions given by Carrera, and the payments of money by him, not only on the contract of purchase, but also for repairing the vessel; they are not at all inconsistent with the allegations of the claimant. If Carrera acted *bond fide* as the agent of Steever, he might be expected to give the instructions he did give, and, out of the profits of the vessel, make the payments which he did make.

It is said, that these professions of Carrera, as to his agency, &c., were made as a cover to the transaction. This, possibly, may have been his motive; but are not the facts consistent with an innocent motive? And if a fair construction of the acts and declarations of an individual do not convict him of an offence—if the facts may be all admitted as proved, and the accused be innocent; should he be held guilty of an act which subjects him to the forfeiture of his property, on mere presumption. He may be guilty, but he may be innocent. If the scale of evidence does not preponderate against him—if it hang upon a balance, the penalty cannot be enforced. No individual should be punished for a violation of law which inflicts a forfeiture of property, unless the offence shall be established beyond reasonable doubt. This is the rule which governs a jury in all criminal prosecutions, and the rule is no less proper for the government of the court when exercising a maritime jurisdiction.

After a full and mature examination of all the facts in this case, whilst we admit the acts of the claimant are not clear of suspicion; we are forced to the conclusion, that the evidence does not authorize a forfeiture of the vessel. The decree of the circuit court is, therefore, affirmed.

Decree affirmed.