





THE VIRGINIA ENTERPRISE

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<h2>The Corrector of Destinies</h2>		
	<p>Being Tales of Randolph Mason as Related by His Private Secretary, Courtland Parks</p> <h3>The Copper Bonds</h3>	
	<p><i>By Melville Davisson Post</i></p>	



I knew that Jean Balduc was from the far north the moment Pietro brought him in from the door. There is a close-sitting air of the provinces on all those who come from there into New York. The smartest tailors, the most Parisian modistes cannot dislodge it. It is the atmosphere of his own land minted into the man, lying deeper than the cut of his coat. I put Jean Balduc up in British America—his big, lank, hard body belonged in the open, a rugged, roomy, primeval open. His light blue eyes were from remote spruce forests reflected on the glimmering snow-crust. His hair was that blue-black which the French carried for violent contrast into the white north. His manner and speech were abrupt and direct.

He demanded an audience with Randolph Mason. I tried first to get a little history out of the big fellow from which to determine the advisability of such an audience. I got only a few craggy fragments. He had come to New York to even up a score with Barnsfield, the copper emperor on Broadway.

He wished to get at the man within the purlieus of the law, if such a thing was possible. If not, he knew another way, very common in his country and direct—and, if not productive of monetary results, at least the balm of Gilead to one's injured sensibilities. He had some other business to settle with Barnsfield (not his own affair), which would require dancing-steps and truce flags but, when that was cleaned up and ended, it would be the Indian cheek on the stock of the Winchester and all white flags down.

I took him to Randolph Mason, and he told his story, walking up and down the length of the room and driving, now and then, his clenched right hand into the palm of his left for emphasis. He was from Huron county on the south shore of Lake Superior. Earlier he had come from the Jacques Cartier river in the Dominion. He had been a factor in the affairs of Huron county; he knew every man, woman and child in it, every tract of land, every nook and corner of it. Three years before he had made a house-to-house, man-to-man canvass of the county for treasurer, and got it, with a majority to spare. He had gained, too, the goodwill of the people, their confidence and their hospitable friendship. Then, like the locusts of Biblical record,

came the emissaries of Barnsfield to purchase the mineral rights under all the lands in the county.

It was not known that there was any copper in Huron county. Indeed, eminent geologists and practical prospectors had long agreed that the county was barren. These emissaries of Barnsfield explained that he was not misled about the sterility of the land. He knew that he was paying out good money for worthless rock, clay and gravel but his plan was to corrupt the prospecting engineer of the Great Lakes Railroad company—have him secretly report to the company the existence of copper in this county. Then he, Barnsfield, would come generously forward and offer to transfer to the railroad the entire mineral rights of the county, provided the company would build a line through it to his wharf at Plymouth on the south shore of Lake Superior. This would enable him to load ore from the known copper regions directly on cars from the lake boats at Plymouth, and shorten the haul to his market by two hundred miles.

This story was gladly swallowed by the natives. They hoped for the coming of a railroad into the county, as the advent of a sort of commercial Messiah. Once or more they had voted large bond subscriptions to lure in such an enterprise, but it was of no avail. Lake Superior remained the only path of commerce.

In a few months these agents had obtained the mineral rights of almost the entire county. A few land-owners along the lake held out against them, and finally, after exhausting their ingenuity, Barnsfield's men came to Jean Balduc for assistance. They explained that these land-owners were blocking the prosperity of the whole people. The only chance of an iron highway to the south was being elbowed out.

Balduc said he would go to these men and induce them to join in the sale, if he were assured from headquarters that the railroad plan would be carried through. They took him to Duluth, and to Barnsfield. He had the plan from Barnsfield's mouth. He was shown maps and profiles of the proposed route, elaborate plans and specifications of a great wharf and warehouses which Barnsfield expected to build at Plymouth when the railroad came, drawings for

an addition to the town—indeed, all the paper details for a city. Balduc was introduced to the engineer of the Great Lakes Railroad company and read his report.

Barnsfield talked very frankly. His plan was not philanthropic. He would get back his money in a year from lessened shipping rates from the lakes. At present, his ore was at the mercy of one line; a rival would mean competition and a fair tariff; it would make his town of Plymouth a commercial center on the lake, and this would bring large profits to him. He did not want Jean Balduc's assistance for mere good-will. He was quite willing to pay a thousand dollars for each land-owner whom Balduc could induce to sell, the money to be paid when his deeds were made to the railroad company. The strength of the plan lay in having the entire county in shape for direct transfer to the Great Lakes railroad. So large a bait could not fail of success, nor was there any moral wrong in foisting these worthless mineral rights on the company. The directors of it were notorious land thieves; a hair-shirt was due them.

Jean Balduc was convinced and elated. He would gladly have lent his aid to the scheme without compensation, out of interest in the people of the county but here was Barnsfield about to reap enormous sums from the venture, and he might as well have the money which was offered. They agreed, then, that Barnsfield should pay him one thousand dollars for every land-owner who made a deed for the mineral rights under his land, the money to be paid when the transfer was made by Barnsfield to the Great Lakes Railroad company. There were thirty-four of these men.

Balduc's popularity, the reputation he had established with the people and his prestige as county treasurer gave weight to his words. He went back to his people, assured them that he had investigated Barnsfield's plan and that it would certainly be carried out. He had seen the very surveys for the road, the estimates, the profiles. Finally he secured the deeds of nineteen of these recalcitrant land-owners. The others could not be induced to sell. Barnsfield marked their names off his list, expressed himself satisfied with the matter and put all his deeds to record. The county, now at the gateway of its fortunes, rejoiced. A great mass meeting was held in the court house; a vote of

thanks was awarded Jean Balduc; he was carried to his home on the shoulders of his admiring fellows; tar-barrels were burned on the hills; horses were paraded; the local papers ran their election roosters (sic) and eagles.

Then came the gray morning, and the gradual rising of the sun. The minions of Barnsfield vanished. Months passed, and no engineer of the Great Lakes railroad sighted his transit into Huron county. No carts were trundled across her rivers, no Italian came to make a footpath for the iron beast but, instead, a little man in spectacles arrived from Marquette and staked out a shipping wharf at Plymouth for the Lake Shore Steamship company. To inquiries he replied that Barnsfield wished to take the copper out of Huron county, and the steamship company must have a wharf from which to load it. Copper! The county sat literally with its jaws agape. But was this merely another subterfuge of Barnsfield? It was not. A little later a well-known superintendent from the regular mining region came with workmen and uncovered the copper-bearing strata. It was copper territory! The whole county richer than the Indies!

Jean Balduc stopped here in his narrative, drew down the muscles of his face until his eyes narrowed to pale slits. He crushed and ground the flaps of his coat pockets in his big hands. His mind was evidently crammed with incidents—vivid, crowding incidents. A flood of indignation poured over Jean Balduc. He was cursed, waking and sleeping, as with a Roman anathema. Even Barnsfield, chuckling in his den in New York, goaded him. He would pay the nineteen thousand dollars when the deeds were transferred to the Great Lakes Railroad company — if he were living then.

Exile was the only solution. Jean Balduc determined to close up his affairs as treasurer of the county, come to New York, collect from Barnsfield the twenty-eight thousand dollars which he owed Huron county for taxes on his mineral rights, transfer it to the county, and then settle his own affair with Barnsfield. After that, if he got away, he would go back to the Jacques Cartier river, but he would likely not get away.

"Have you seen Barnsfield?" said Randolph Mason.

"Yes," replied the man "I went to him yesterday to collect these taxes, and he tried to beat me even on that. He was hard up, he said, he had no ready money; but he would give me bonds of the Empire Copper company if I would take these bonds at par and turn over the tax receipts to him. I refused, and he asked me to come back today at one o'clock."

Randolph Mason turned to me. "What are these bonds worth?" he said.

"They are not listed on the stock exchange," I answered, "but there is a curb market for them at seventy five cents."

Randolph Mason walked over to the window and stood looking out at the heavy snow-flakes driving against the glass. The big northerner waited, but Mason remained motionless, his hands behind him. Finally, the man took up his hat and put it on.

"Well," he said, "is there any trail out?"

Mason turned abruptly. "Go back to Barnsfield," he said, "and take his bonds at par for the taxes. Mr. Parks will accompany you and write into the tax receipts that these taxes are paid in full by the delivery to you of the bonds, setting out the number and denomination, as you receive them. Give Barnsfield the receipts, and come back to me."

The man was aghast. "Why, sir," he said, "you cannot mean that! I would be a damned fool to do that. The county would be losing ten thousand dollars to take the bonds at par."

"Obey me," said Randolph Mason, and he turned back to the window.

"All right," said the big fellow, "you're the doctor. What you say goes, but it certainly does sound damn fool."

I went with him to Barnsfield. We crossed the snow-clad street, walked in under a gigantic granite arch and took a steel cage to the

twenty-fourth floor. A limp youth led us to the copper magnate in a wing of the building above Broadway. Barnsfield was inclined a little to display in his setting. There was a silk Oriental rug on the floor, on the walls were rare prints, with here and there a cross imitation of a master. Barnsfield evidently took his art as prescribed by the foreign agents. The only table in the room was a huge piece of shining mahogany heavy with carvings in atrocious taste, the sort of thing which the full pocket gets when it leaves its selection to the dealer. Behind it was Barsfield. I got the impression of something cold and pudgy, when I looked at him. A like impression awaits the spectator before the glass box at the end of the line in the National Aquarium at Naples—a deep sea thing in a nest of weeds.

He was a tall man, fattened out of shape, fat crowding his eyes back, distending his jowls, sagging his chin. His hair was light and thin, brushed smooth to his poll. His eyes were dull, the eyes which Victor Hugo warned against, the cloudy eyes covering mines, rifle-pits, trenches manned with cannon shotted to the muzzle and the fuse smoking. A fat hand, illuminated by a great Kafir diamond, flopped about on the mahogany table. He showed no apparent interest at the arrival of Balduc, but he was a bit uneasy over me. His fingers wandered to an electric button, the nails scratching the rim of it.

"Mr. Barsfield," began Balduc. "I came back about those taxes."

Barnsfield looked inquiringly at me. "Yes," he said. He wished to know who I was before his answers became more than monosyllabic.

"That's my lawyer's secretary," said Balduc. "I have concluded to take your chips and whetstones. They are better than nothing but I want Mr. Parks to look at them."

The explanation cleared Barnsfield's face. If Balduc was bringing Huron county up to be quietly sheared of ten thousand dollars, a lawyer's secretary, merely to examine the wording of the bonds, was a detail to be pleased over. He dived down into the drawers of his desk, fished out a package of bonds and laid them on the table.

"Good five per cents," he said, "secured by a mortgage on all the copper properties in the county, including plants, tram-roads and improvements to be hereafter made. In six months they will be worth a hundred and twenty."

I looked carefully at the bonds. They were in the usual form of such securities, printed on bank-note paper, with a picture on the back of a huge copper pot, tipped over, pouring out a stream of gold pieces. They were of a first issue of the Empire Copper company, limited to a million dollars, and in denominations of one thousand. I smiled at the confidence of Barnsfield. There were exactly twenty-eight of these in the pack. He had pinned them up for Balduc.

Barnsfield patted the bundle of securities with his fat hand. "There are the bonds," he said, "now give me the tax receipts signed by you as treasurer."

Balduc took a big leather pocketbook from his coat and handed me the tax receipts. I wrote into them, "Paid this day by the delivery to the treasurer of Huron county of twenty-eight bonds of the Empire Copper company, numbered three hundred and fifty to three hundred and seventy-seven inclusive." Then Balduc signed them and handed them over to Barnsfield.

He placed the package in a pigeon hole of his desk, and came up from behind it transfigured. The chill in the air was gone, the hidden ice-floes were melted, the low-lying fogs were golden in the sun. He had not imagined that the thing could be done so easily. He had looked for long wrangling, delays, a siege. It was like the answer to prayer put into one's hands while they were still clasped. One ought to go wreathed in smiles when events waited at one's beck so courteously.

He chortled softly in his throat and beamed on us; then he talked. He was glad to see Jean Balduc again, pleased to meet me. He was a thirst for news from the copper land, aching with wonder about the inexplicable delay of the Great Lakes railroad in building its line. It was his dearest, most closely cherished hope to see the citizens of Huron County wax rich from the development which he intended should be made on the south shore of Lake Superior. He hinted

vaguely at large good fortune which the future held for Balduc, a future of which he, Barnsfield, was in some esoteric way the directing overlord. He wanted a long, intimate, personal talk with Balduc. He must come that night with him to dine, and I, too; he especially wished me to come. I had found favor in his sight. There would be only the three of us—his family was in Florida. It would be an informal, friendly dinner.

I looked to see the deep fires in Jean Balduc break through but he accepted the invitation on the spot for the two of us at eight o'clock that evening.

Barnsfield lighted us to the door with smiles, and there we left him, kneading his pudgy hands and thanking Providence that the human game, like no other, lacked instinct to protect it.

We went back to the office without a word. Randolph Mason looked at the bonds, and then directed me to go out and sell them for what I could get. I sold the bonds on the curb for seventy-five cents on the dollar and got the cash in large bills. Randolph Mason handed this money to Jean Balduc and told him to go back to the Jacques Cartier river. The man was puzzled and angry. Was this all that Mason could do—cause him to collect the taxes of Huron county at a loss of some nine thousand dollars, embezzle the money and hide out for the rest of his life? He could do better than that. The open way of the great north was a better one. He would send the money to Huron county; then he would go to Barnsfield's little informal dinner and square the account with him.

I came forward then, and begged Mason to explain what he meant by his plan. As the matter stood, Balduc could not do even as he himself suggested. He could not send the money to Huron county, and leave New York clear. The sum he had lacked nine thousand dollars of paying the taxes. He had surrendered and receipted for the taxes in full, twenty-eight thousand dollars. If he sent back nineteen thousand, he would be instantly charged with theft of the other nine. Explanations would hardly avail him. He would certainly be extradited and imprisoned.

Randolph Mason went over to a bookcase, got down a volume of Reports of the State of Michigan, and sat down with it between the two of us as a tutor might do with puzzled little boys. He read the case, marking with his finger in the book, very carefully to us. I saw instantly the intent of his plan, but he went on, explaining in lucid detail the effect of it on Balduc, on Barnsfield, on Huron county, the equities which it adjusted, the necessity of government which it imposed, the penalties which it evaded, and the ancient, correct, accurate doctrine of law upon which this decision of the Michigan courts is founded.

The tension in Jean Balduc's big body relaxed, the pressure in his face ebbed. He understood the whole scheme to the end now. I do not know of any emasculated language which could give the force and directness of Balduc's own words. He got slowly to his feet, stretched out his arms, filled his big lungs. "By God," he said, "you have got the fat thief on the cross!"

Then he turned to me. "Mr. Parks," he went on, "I suppose you despised me down to the ground when I agreed to eat with that puffy-throated viper; but I only wanted to get a last chance at him, to tell him what I thought of him, and then to jam his head on the table among his pots. We will go up there tonight, you and I. We will show him how he has caught his own legs in his man-trap. I will tell him some things which he needs to hear but we will not eat with him. If I were starving in the snow drifts of Hudson bay, and he came to find me with a load from the company store, I would not eat with him. I would eat but I would kill him first."

Barnsfield, like every parvenu, wished to point out for our admiration all the treasures in his hideous, showy palace before we went in to dinner. The place might have been the storehouse of Kidd in the golden days of the Spanish Main. A carved wood ceiling from some chateau in Normandy, a marble vase from Sardinia, new Italian bronzes, old Dutch chairs mingled with Chippendale, Heppelwhite, and atrocious things in gilt, tables of the empire beside colonial consoles, Moorish corners with old arms, rugs, banners—all the indiscriminate loot of a barbarian with money sacks.

I admired with discrete and evasive generalities. Balduc said nothing and finally we went in to dinner. I had not seen its like, except at Thanksgiving in a New England farm-house. A turkey on his golden back in a huge platter, a saddle of mutton, trussed fowls, food enough for a ship's crew, piled hot and steaming on the biggest table in New York.

We sat down, and Barnsfield put his hands on the tablecloth, closed his puffy eyes, and made ready to invoke a blessing on his house.

Jean Balduc spoke then. "Mr. Barnsfield," he said, "I am sick."

Barnsfield sprang up, got a decanter of brandy from a sideboard and set it down by Balduc. "There," he said, "that'll fix you."

"No," said Balduc, "nothing will do me any good but to get outside in the air."

Barnsfield started toward a door. "Come right here," he said, "on this balcony."

Balduc got up then. "No," he said, "I will go out into the street with Mr. Parks; but, before I go, I want to hand you this six hundred dollars that I owe you," and he took a roll of bills from his waistcoat pocket and laid them on the tablecloth.

Barnsfield saw instantly that some climax had arrived, but what he did not know. He came back and sat down in his chair.

"What do you mean?" he said.

"I mean," replied Balduc, "that I got only nineteen tracts of land for you in Huron county, so you owed me just nineteen thousand dollars. You paid me today, nineteen thousand, six hundred, which was six hundred too much."

Barnsfield's face began to pale. "I don't understand," he said. "I paid the taxes to you. I gave you twenty eight bonds for them and got the receipt. I did not pay you. I paid the taxes."

"Yes," said Balduc, "you thought you paid the taxes; but you didn't. You paid me. The bonds brought nineteen thousand, six hundred dollars. I give you back the six hundred now, and our account is square."

Barnsfield got up. "I paid the taxes," he said. "I got the tax receipts."

"No," said Balduc, "taxes can only be paid in money. That's the law. You can't pay taxes with property. Your tax receipts are not worth hell-room. They acknowledge the payment in bonds."

Barnsfield turned to me. "What's all this rot?" he said.

I got up then, and walked around the table. "What Mr. Balduc has said," I answered, "is quite true. Taxes can be paid only in money. If one owing taxes delivers property to the tax-officer for them, he does it at his own risk. He does not thereby pay his taxes. If the tax-officer keeps the property, the other must repay the taxes in money. The state accepts only money for taxes."

"It's embezzlement of taxes," cried Barnsfield. "If I have to repay them, he'll have to go to the penitentiary!"

"No," I said, "It is not embezzlement of taxes. It is not any crime at all, for the reason that the tax-officer is authorized to collect only money. He has no authority to receive property. Property, if delivered to him, is at its owner's peril. He is not chargeable with embezzlement if he appropriates this property to his own use, nor are his bondsmen liable for it because they guarantee only a proper accounting of money which the officer receives as taxes."

Barnsfield jumped up and started toward a little telephone at the corner of the sideboard. Balduc darted across the room, smashed the telephone with his knuckles and confronted Barnsfield.

"Sit down, you puffy varmint," he said. "Into your chair with you!" And, seizing the man by the shoulders, he whirled him around and forced him down into his chair. Balduc stood over him a moment, his fingers working with restrained savagery. His jaws clamped his eyes

narrowed to a thin line of blue. Then he turned to me. "Let us go," he said, "before I tramp the creature's face out of shape on the floor."

We left Barnsfield, wheezing with excitement, his breath gone and his fat hands wabbling about on the arms of his chair.

In the street, Balduc took a deep breath and shook himself like a dog coming out of a slime-vat. "I had to get out of there," he said, "or kill him. Good-by. If you ever need a slave with steel fingers, send word of it to Jean Balduc on the Jacques Cartier river," and he was gone.

I took a hansom to the Dresden for a little dinner.

For the legal principle involved in this story see *People vs. Seeley*, 117 Mich., 263 75 N. W. R., 609.

A collector of taxes can receive nothing but money in payment of taxes. If he receive property in lieu thereof and appropriate it to his own use, he is not guilty of embezzlement, and his bondsmen are not liable.—*People v. Seeley*, supra. A collector of taxes can receive nothing but money in payment of taxes.—*Miller v. Wesener*, 45 W. Va., 59.



Afterword

Melville Davisson Post ended his stories with a box containing citations to court cases enunciating the obscure rules behind Randolph Mason's legal legerdemain. But he did not just rewrite the facts of those cases and insert Mason in the middle. He uses those court rulings to conclude his legal dramas in imaginative ways, always to the surprise of his readers.

A look at *People v. Seeley*, an 1898 decision of the Michigan Supreme Court that Mason used to foil the copper king, illustrates how creative Post was. Howard Seeley, the treasurer of a Michigan county, accepted timber from a resident to pay his tax bill, but the logs were lost before Seeley could sell them, resulting in his conviction for misappropriation of public funds. Reversing the conviction, the Michigan Supreme Court cited the rule that taxes must be paid in money. In contrast, Jean Balduc's predicament arose when he unwittingly used his prestige as Huron County treasurer to help Barnsfield acquire valuable mineral rights from nineteen county landowners for only \$1,000 apiece. After Barnsfield refused to pay them, Barduc becomes a pariah in his own community. He consults Mason while in New York to collect county real estate taxes of \$28,000 from Barnsfield (and to assault him). Following Mason's orders, he accepts twenty-eight bonds from Barnsfield to satisfy his tax bill; the bonds are sold at a discount; the proceeds are to be divided among the nineteen land-owners when he returns home. At a final meeting, Barduc tells Barnsfield that by law his bonds cannot satisfy his tax obligations. The copper magnate is left wheezing and shaking in a chair in his opulent home when he realizes that he has been out-flanked by Balduc and still owes the taxes.

But there is a loose end: he also still owns valuable mineral rights in Huron County which he acquired by both his superior knowledge of geology and brazen deception of the landowners. If, however, he does not pay the taxes, he will lose those rights through tax forfeiture proceedings. He told Balduc that he was cash-strapped but he also expressed keen interest in his investment at their last meeting. What will the copper emperor do? That Post left this question hanging, to be discussed and argued by his readers, attests to his self-confidence and shrewdness as a writer of legal fiction.

"The Copper Bonds" appeared on page 3 of *The Virginia Enterprise*, Virginia, Minnesota, on September 13, 1912. The complete text of *People v. Seeley* is posted in the Appendix.



Appendix

PEOPLE v. SEELEY.

(Supreme Court of Michigan. June 8, 1898)

1. A conversation between an outgoing treasurer and his successor, held after the former had relinquished the office, may be competent as an admission of a shortage in his accounts.

2. Under 3 How. Ann. St. § 9263a, making it a felony for a public official to appropriate to his own use moneys received in his official capacity, and section 9263c, making failure to pay over to his successor all moneys and property collected prima facie evidence of the offense, it is essential that money shall have been collected; and accused may rebut a prima facie case, made, under the statute, by an apparent shortage on the books, by proof that no moneys were received, and that the shortage represented saw logs which he had taken in payment of taxes, in lieu of money, and which had been lost.

Exceptions from circuit court, Gladwin county; Nelson Sharpe, Judge.

Howard Seeley was convicted of felonious appropriation of public moneys, and brought exceptions. Reversed.

Fred A. Maynard, Atty. Gen., and Guy E. Smith, Pros. Atty., for the People. D. G. F. Warner, for respondent.

MOORE, J. An information was filed against the respondent, the material part of which reads as follows: "* * * That heretofore, to wit, on the 3d day of April, A. D. 1893, and on divers other days and times between said 3d day of April, A. D. 1893, and the 1st day of April, A. D. 1894, at the township of Beaverton, in the said county of Gladwin and state of Michigan, one Howard Seeley, late of said Beaverton township, in said county of Gladwin, and he, the said Howard Seeley, being then and there, during all of said time, treasurer of said township of Beaverton, and the collector of taxes of said township, and a public officer in the said state of Michigan, did then and there,

knowingly and unlawfully, appropriate to his own use nine hundred dollars, and of the value of nine hundred dollars, of the money of the said township of Beaverton, which said money had been collected by said Howard Seeley, by reason of said Howard Seeley's official capacity, came into his possession, contrary, to the form of the statute in such case made and provided," etc. The respondent declined to plead to this information, and a plea of not guilty was entered by the court. The respondent was convicted, and brings the case here by writ of error.

The record shows that from April, 1893, until April, 1894, Mr. Seeley was treasurer of the township of Beaverton. The records of the township show that he received money as treasurer, and that he failed to turn over to his successor about \$700. In December, 1894, Mr. Seeley proposed to the township board to settle with them by turning out the notes of several individuals, indorsed by him, which proposition was accepted. January 1, 1895, the notes were delivered, and a receipt given for them, signed by the supervisor.

On the trial the people gave in evidence a conversation had between Mr. Seeley's successor and himself, which conversation was had after Mr. Seeley had ceased to be treasurer. This was objected to because Mr. Seeley was not then in office. We think it was competent, as an admission on the part of the respondent of a shortage in his accounts.

The respondent offered to show in his defense that, while the records show the respondent had collected a large amount of taxes, he did not in fact receive money for the taxes, but received saw logs for them, and, upon receipt of the saw logs, receipted the taxes as though they had been paid in cash. He also proposed to show these logs were put into the river, and that the boom which held them in place went out, and the logs were lost, and the respondent became financially embarrassed, and for that reason could not reimburse the township. The court declined to allow this proof to be made. This is said to be error.

The statute under which this information is filed reads as follows:

"That if any person holding any public office in this state, or if the agent or servant of such person, knowingly and unlawfully appropriates to his own use, or to the use of any other person, the money or property received by him in his official capacity or employment, of the value of fifty dollars or upwards, the person so offending shall be deemed guilty of a felony, and shall upon conviction, be punished by imprisonment in the state prison, at hard labor, not to exceed ten years, or by fine not exceeding five thousand dollars, or both said fine and imprisonment."

3 How. Ann. St. §9263a. Section 9263c of the act provides that a failure or refusal of any person holding public office to pay over and deliver to his successor all moneys and property which shall be in his hands as such officer shall be prima facie evidence of an offense against the provisions of section 1 of this act.

It will be noticed the offense charged is that the respondent knowingly and unlawfully appropriated to his own use \$900 of the money of said township. If he never collected the money, is he guilty of its appropriation? It is urged by the people that, when it is shown by the records the respondent received money which he failed to pay over, the people have made their case: citing *People v. Bringard*, 39 Mich. 23. This would doubtless make a prima facie case, under the statute, but a prima facie case maybe rebutted. May not the respondent show the taxes were never in fact paid to him in money? The township treasurer was not authorized by law to receive anything for taxes except money. The taxpayer is bound to take notice of the law in that respect. The turning out of commodities to the treasurer will not pay the taxes, or discharge the taxpayer from the obligation to pay them. It is not competent for a township treasurer to receive saw logs in payment of taxes, and bind the township by so doing. In the case of *Turnbull v. Alpena Tp.*, 74 Mich. 621, 42 N. W. 114, the taxpayer paid his taxes, in part, by giving his note. The court said:

"The note cannot be treated as a payment of this tax. The treasurer had no right or authority to take the note of the plaintiff in payment of his taxes, and the defendant township could not be bound by such action. Taxes are due to the public, and not to the tax collector individually. Parties, in paying their

taxes, are bound to know that the tax collector, though the agent of his township, has no authority, as such agent, to accept anything in payment of taxes to the public except money, such orders as are drawn upon him by the proper authorities, or orders that are properly receivable as taxes. His warrant directs him to collect from the persons named in the tax roll the amount of taxes chargeable to each person thereon, and directs how the moneys are to be applied and accounted for by him. The rights and interests of the public are to be regarded and protected. The very existence of the government might be endangered if its public revenues could thus be bartered away by its tax gatherers. The giving of a note is not the payment of a tax."

However culpable the acts of the respondent are, we do not think that by receiving logs for taxes he bound the township, and received money officially, so as to render him, by a failure to turn over the value of the logs to his successor, liable to conviction under the charge contained in the information. We think the court erred in not receiving this testimony. If, on the new trial, it is shown he received money for the logs, he might be convicted of the offense charged.

The other errors assigned are either not well taken, or are not likely to occur again, and for that reason will not be discussed. The case is reversed, and a new trial ordered. The other justices concurred. ■



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